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GOVERNMENTS AND PARTIES IN CONTINENTAL EUROPE

BY

A. LAWRENCE LOWELL

IN TWO VOLUMES

VOL. I

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THIRTEENTH IMPRESSION

To the memory of

EDWARD JACKSON LOWELL

whose sympathy and wise counsel
were an invaluable help in the
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PREFACE.

The State has been represented at sundry times under different figures. In the frontispiece to Hobbes' Leviathan, in the edition of 1651, it is given the form of a gigantic prince whose body is composed of minute human beings of every kind. A more common symbol is that of a ship sailing the trackless ocean, with a venerable pilot at the helm, steering by the light of the everlasting stars. To the writer the State sometimes presents itself under the figure of a stage-coach with the horses running away. On the front a number of eager men are urging the most contrary advice on the driver, whose chief object is to keep his seat; while at the back a couple of old gentlemen with spy-glasses are carefully surveying the road already traversed. Now, useful as all these persons undoubtedly are, there ought to be room also for the quiet observers, who watch the movements of the horses, and note the strain on the wheels, axles, and bolts; who listen to the hub-bub on the front seat, and the grave conversation at the rear. To drop the simile and speak directly, there is a real need to-day of a thorough examination into the actual working of modern governments, and in one

direction at least that need is still imperfectly satisfied. I refer to the activity of the parties, which furnish the main motive power in public life.

A great deal of discussion has taken place of late over the question whether political parties are a good or an evil, but from a scientific point of view this seems very like making the same inquiry about the winds and the tides. In reality parties are a fact, and as such their manifestations ought to be studied. Moreover, it is impossible to say that parties in the abstract are a good or an evil, because the result depends on the circumstances under which they act. In Venice, for example, the absence of parties, or factions, prevented the State from falling into anarchy and despotism like the other Italian republics. In England the existence of two strong parties enabled the people to control the crown, and made parliamentary government possible. In France the subdivision of parties has prevented the parliamentary system from being a success, and both there and in Germany it has been a constant obstacle to popular government; while in Switzerland the subdivision and low development of parties has enabled the people to maintain one of the most perfect democracies the world has ever seen.

The phenomena of parties considered as a fact have been examined much less than they deserve. Perhaps the best work in this line is that of Dupriez, whose book, "Les Ministres dans les Principaux Pays d'Europe et d'Amérique," appeared while the following

pages were in preparation, and with whose conclusions the writer agrees in the main. Dupriez approaches the subject, however, from a somewhat different direction, for he deals primarily with the minister and treats of the parties so far as they affect his authority; while the writer was interested first in the parties themselves, and considered the position of the cabinet from its bearing on their condition.

The present work deals only with a very small part of the great subject of political parties. It is simply an attempt to study the relation between the development of parties and the mechanism of modern government, and other questions are referred to only so far as they have a bearing on the main theme. In carrying out this object, a systematic order of arrangement has been followed so far as practicable. The treatment of each country begins with a description of its chief institutions, or political organization; this is followed by a sketch of its recent history, in order to show how the parties actually work; and, finally, an attempt is made to find the causes of the condition of party life. The investigation is limited to the principal countries where a division into two great parties does not prevail, and where there usually exists in its place a division into a number of more or less sharply defined political groups. This department of the subject seemed to separate itself naturally from the rest, and was selected mainly because it had been far less studied than the growth and influence of the bi-party system that prevails generally in Anglo-Saxon countries.

For the convenience of students, the constitutions of all the nations dealt with that have written constitutions have been added in an appendix; and they have been given in their original languages, because they are more valuable in this form than in a translation. In the case of Switzerland, where the constitution is officially printed in German, French, and Italian, the French text has been selected.

BOSTON, *September* 4, 1896.

CONTENTS.

CHAPTER I.

FRANCE: INSTITUTIONS.

PAGE

Origin and nature of parliamentary government in England . . 2
The system imperfectly copied on the Continent . . . 6
The French constitutional laws 7
History of their creation 8
The method of amendment 12
Their legal and moral effect 13
The Chamber of Deputies 14
The method of election, *scrutin de liste* and *scrutin d'arrondissement* 15
The Chamber a tumultuous body 18
The Senate 19
Its functions and actual influence 21
The ministers as a rule not responsible to it 22
The National Assembly 26
The President of the Republic 26
His functions 27
His powers really exercised by responsible ministers . . 28
The Council of State 30
The ministers 32
Their responsibility to the Chamber of Deputies . . . 33
Their enormous power (which is due to the four following matters) 33
The paternal nature of the government 34
The centralization of local government 36
The department, with its prefect and general council . . 36
The arrondissement and the canton 40
The commune, with its mayor and communal council . . 40
Paris and Lyons 42
The legislative powers of the executive 43
Ordinances and appropriations 44

CHAPTER IV.

ITALY: PARTIES.

History of parties 189
Cavour's relation to parties 189
Government by the Right 190
Effect of the advent to power of the Left in 1876 . . . 191
The Depretis-Nicotera cabinet 193
The Cairoli-Zanardelli cabinet 195
The Cairoli-Depretis coalition 197
Successive cabinets of Depretis, and the *Transformismo* . . 198
The cabinets of Crispi and his fall 200
The bank scandals, the Sicilian insurrection, the restoration of Crispi and his defeat 201
Causes of the condition of parties 204
The attitude of the Clericals 205
The system of committees 206
Interpellations 210
The political character of the people as shown in the lack of unity in the cabinets 212
The prominence of the personal element 214
The social disorganization in the south 215
The political cliques 216
And their relation to the deputies 218
The connection between national and local parties in France and Italy 220
Autocratic power inconsistent with a parliamentary system . . 226
The need of a stronger judiciary 228
Outlook for the future 230

CHAPTER V.

GERMANY: THE STRUCTURE OF THE EMPIRE.

The Holy Roman Empire 232
The growth of Prussia 233
The Germanic Confederation and the Diet 234
The failure of the Liberal attempt at union in 1848–49 . . 236
Bismarck and the war of 1866 237
The North German Confederation and the Empire . . . 240
The constitution 241
Nature of the federal union 243
Legislative centralization and executive decentralization . . 243

Inequality of rights among the members 246
The privileges of Prussia 246
The privileges of the other states 249
The Reichstag: its composition 252
Its powers 256
The Bundesrath: its composition 259
Its character and the position of the members . . . 262
Its internal organization 265
Its powers and privileges 267
Its actual influence 272
The Emperor 273
Interlacing of his powers as Emperor and as King of Prussia . 274
The Chancellor 276
He is not responsible to the Reichstag 278
His functions and substitutes 279
The judicial system: The Reichsgericht 281
Power of the courts to hold statutes unconstitutional . . 282
General character of the federal system 284

CHAPTER VI.

GERMANY: PRUSSIA AND THE SMALLER STATES.

Prussia: The constitution 286
The King 288
The ministers responsible only to him 288
Their independence of each other 290
The bureaucracy 293
Administrative justice, and the administrative courts . . 294
The Landtag: its powers and procedure 297
The House of Peers 301
The House of Representatives 303
The three-class system of election, and its effects . . 303
The new local government 308
The objects of the reform 310
The principles of the system 311
The province and its organs 314
Berlin 318
The Regierungsbezirk 318
The Kreis 321
The rural commune, and the manor 325
The city 327
Actual working of the system 331

Saxony 334
Bavaria: Institutions 337
Parties 338
Wurtemberg: Institutions 340
Parties 343
Baden: Institutions 344
Parties 345
Hesse 347
Oldenburg 348
Brunswick 350
Anhalt 351
Waldeck 353
Lippe-Detmold 354
Schaumburg-Lippe 355
Saxe-Weimar 356
Saxe-Meiningen 357
Saxe-Coburg-Gotha 358
Saxe-Altenburg 359
Schwarzburg-Rudolstadt 361
Schwarzburg-Sondershausen 361
Reuss-Schleiz 362
Reuss-Greiz 363
The two Mecklenburgs 364
Hamburg, Bremen, and Lübeck 368
Alsace-Lorraine 372
The vitality of monarchy in Germany 376

GOVERNMENTS AND PARTIES IN CONTINENTAL EUROPE.

CHAPTER I.

FRANCE: INSTITUTIONS.

In order to understand the government of a country it is not enough to know the bare structure of its institutions. It is necessary to follow the course of politics; to inquire how far the various public bodies exercise the authority legally vested in them; and to try to discover the real sources of power. It is necessary, in short, to study the actual working of the system; and although this depends chiefly upon the character, the habits, and the traditions of the people, it is also influenced in no small measure by details, like the method of voting, the procedure in the legislative chambers, and other matters, that are too often overlooked on account of their apparent insignificance. Now in several of the states on the Continent of Europe the main features of representative government have been copied directly or indirectly from English models, while the details have grown up of themselves, or are a survival from earlier tradition. It is not surprising, therefore, that the two are

more or less inconsistent with each other, and that this want of harmony has had a pronounced effect on public life.

Parliamentary government in England.

Although most people to-day are familiar with the parliamentary system of government as it has developed in England, it may not be out of place to give a brief description of it here on account of the profound influence it has had in other countries.

The Middle Ages gave birth to two political ideas. The first of these was a division of the people into separate classes or estates, each of which had independent political functions of its own. The second was representative government, or the election — by those estates whose members were too numerous to assemble in a body — of deputies authorized to meet together and act for the whole estate. The number of these estates, and the number of separate chambers in which their representatives sat, varied in the different countries of Europe;[1] but it so happened that in England all the political power of the estates became in time vested in two chambers.[2] One of them, the House of Lords, contained the whole body of peers, who were the

[1] Thus in France, and in most continental countries, there were three, while in Sweden there were four: the clergy, the nobles, the cities, and the peasants. The existence of only two Houses in England might almost be called an accident. (Cf. Freeman, *Growth of the English Constitution*, p. 93.)

[2] In 1664 Convocation, which was the ecclesiastical chamber, discontinued the practice of voting separate taxes on the clergy, and thus the clergy definitely ceased to be an estate of the realm. (See Hallam, *Const. Hist. of England*, chap. xvi.)

successors of the great feudal vassals of the Crown; while the other, the House of Commons, was composed of the deputies from the towns and counties, who had gradually consolidated into a single house, and might be said to represent all the people who were not peers.

By degrees the House of Commons acquired the right of originating all bills for raising or spending money, and hence its support became essential to the Crown. But its members were independent, and on the whole less open to court influence than the peers. They felt under no obligation to support the policy of the government, or to vote an appropriation unless they understood and approved the purpose for which it was to be used; and King William III., during his wars with France, found them by no means as easy to manage as he could wish. Hitherto his ministers had been selected from both political parties, and hence were not in harmony with each other, and were unable to exert an effective influence in Parliament; but between 1693 and 1696 he dismissed the Tories, and confided all the great offices of state to the Whigs, who had a majority in the Commons. The result was that the House which had been turbulent became docile; and the ministers by winning its confidence were able to guide it, and obtain the appropriations that were required. This was the origin of the practice of selecting the ministers from the leaders of the majority in Parliament, — a practice which at a later time crystallized into a principle of the British Constitution.[1] But of course men who held the most important offices, and at the same time led the

[1] Macaulay, *History of England*, chap. xx.

House of Commons, were certain not to be mere tools in the hands of the King. They were sure to try to carry out their own policy, and when the sceptre of William had passed into the hands of the first two Georges, who were foreigners and took little interest in English politics, the ministers exercised the royal power as they pleased, and became in fact the custodians of the prerogatives of the Crown. The subordination of the King to his ministers is, indeed, the inevitable result of the system; for so long as the latter retain their influence over the House, and can direct its votes, they can hold their offices and administer them according to their own views. If the King attempts to dismiss them they can block the wheels of government, by inducing Parliament to withhold supplies; and if, on the other hand, they cease to be the leaders of the House, and a different party with new leaders gets a majority, the King finds himself obliged to send for these and intrust the government to them. The system which had been devised in order that the King might control the House of Commons became, therefore, the means by which the House of Commons, through its leaders, controlled the King, and thus all the power of the House of Commons and of the Crown became vested in the same men, who guided legislation and took charge of the administration at the same time.

The House of Lords, meanwhile, was losing ground. It had no right to initiate or amend money bills, and, what was far more important, it had no influence on the formation or the policy of the cabinet. The ministers were, indeed, often peers, but they were not selected

because they belonged to the majority in the House of Lords, nor did they resign when that body voted against them. Like their colleagues from the other House, they represented the majority in the Commons, and were solidly in accord with it. The House of Lords, therefore, found itself confronted by the combined power of the Crown and the House of Commons, and this it was unable to resist. In fact the power to create new peers furnished the Crown, or rather the ministers acting in its name, with a weapon always ready to break an obstinate resistance, and at the time of the Reform Bill of 1832 a threat of this kind was enough to compel submission. The Upper House has thus gradually lost authority, until now it does not venture to reject any measure on which the cabinet is really in earnest, — unless perchance, as in the case of the recent Home Rule bill, it is convinced that the House of Commons does not fairly represent the people, and that a new election would result in a victory for the party in opposition. In such a case the refusal to pass the measure is tantamount to a demand for a Referendum.[1]

The ministers remain in office only so long as they continue to be the leaders of the Lower House and are able to control the majority. When this condition has changed, a vote is sometimes passed to the effect that the ministers have ceased to possess the confidence of the House; but such an express declaration is rarely used

[1] It is a curious fact that the Premier of New South Wales has recently proposed to prevent deadlocks between the Houses by providing that after a bill has been rejected once by the Legislative Council and again passed by the Assembly, the Council shall not have power to reject it a second time, but may require it to be submitted to popular vote. A similar proposal has been discussed in Belgium.

at the present day, and a hostile vote on any matter of considerable importance is treated as a proof that the government has no longer the support of a majority. After such a vote, therefore, the ministers resign, and if there is a normal division into two parties the Crown sends for the leader of the opposition, and intrusts him with the formation of a cabinet. The defeated ministers have, however, one other alternative. If they think that the House of Commons has ceased to be in harmony with the opinion of the nation, they can dissolve Parliament in the name of the Crown, and try the chance of a new election. Thus in the English parliamentary system the direction of the legislature, and the control of the executive, is in the hands of the leaders of the majority in the House of Commons. For their exercise of power these leaders are directly responsible to the House of Commons, which can call them to account at any time; while the House itself is responsible to the people, which gives its verdict whenever the end of the term of Parliament or a dissolution brings about a general election.

Parliamentary government on the Continent.

Turning now from the consideration of English forms of government to those in use on the Continent, we find that the main features of the British Constitution have been very generally imitated. In fact, the plan of two chambers, one of which issues from an extended suffrage and has the primary control of the purse, and of a cabinet whose members appear in the chambers and are jointly responsible to the more popular one, so that all the ministers resign on an adverse vote of that chamber, is of Eng-

lish origin, and has spread widely over Europe. These features of the parliamentary system are striking, and have become famous, while the procedure in the House of Commons, which enables the system to work smoothly, has attracted far less attention, and has been followed very little. This is peculiarly true of France, where the principle of cabinet responsibility has been adopted to the fullest extent, but where there exist at the same time several practices that help to twist parliamentary government out of the normal form. More curious still is the fact that these very practices have been blindly copied by other countries which intended to imitate the English system.

Outline of the first and second chapters.

A description of the French government must begin with its structure, with the legal composition and powers of the different political bodies. This will occupy the present chapter. In the next, the actual working of the system will be considered, especially in regard to the character of political parties; and an attempt will be made to explain the peculiarities that are found by a reference to the condition of the people, and to those parts of the political machinery that seem to have a marked effect. In other words, we shall begin with the skeleton, and then take up the muscles and nerves.

The French Constitution.

The first thing one looks for in a modern government is the constitution; but although the French Republic has a constitution, it differs in two very important respects from those to which we are accustomed. It is not comprised in any one document, but in a series of distinct laws, and it

contains few provisions limiting the functions of the different bodies, or prescribing fundamental rights which the state is enjoined to respect. This is a departure not only from American, but also from the earlier French usage, for previous constitutions in France have been long documents and have contained elaborate bills of rights; although the absence of practical guarantees has made their effectiveness depend upon the good pleasure of the government. The present constitution is very different, and barely provides for the organization of the powers of the state, without even speaking of such important matters as a yearly budget or the tenure of office of the judges. It does little more than establish the main framework of the government by declaring what the chief organs of public life shall be, leaving them almost entirely free to exercise their authority as they see fit. The reason for such a departure from French traditions is to be found in the circumstances of the case. The earlier constitutions in France were attempts to frame an ideal system, but the present one resulted from an immediate need of providing a regular government of some sort that could rule the country for the time, and was drawn up by men who had no belief in its inherent perfection. To understand this it is necessary to glance at the history of the period.

History of its creation.

The rapid series of defeats suffered by the French armies at the hands of the Germans, in 1870, destroyed the tottering authority of the empire, and as soon as the news of the surrender of Napoleon III. at Sedan reached Paris an insurrection

broke out on the fourth of September. The republic was at once proclaimed, but this was no time to debate plans for a constitution, and so long as the war lasted the country was ruled by the self-elected Government of the National Defense. When the war was over, a National Assembly with indefinite powers was chosen by universal suffrage. The member of this body who commanded the most general public confidence was Thiers, the historian, and former minister of Louis Philippe. To him the Assembly intrusted the executive power, and in August, 1871, it gave him the title of President, without, however, fixing any term for the duration of the office. Thiers was constantly urged to introduce the parliamentary system by allowing his ministers to assume the responsibility for his acts, but this he refused to do, saying that the position in which it would place him, although perfectly consistent with the dignity of an hereditary king, was for him, a little *bourgeois*, entirely out of the question.[1] He held himself, however, personally responsible to the Assembly for the conduct of his government, took part in the debates on the measures he proposed, and declared that he was ready to resign at any time, if the majority wanted him to do so.[2] This state of things continued

[1] The law of Aug. 31, 1871, declared that the President as well as the ministers should be responsible to the Assembly. See Dupriez, *Les Ministres dans les Principaux Pays d'Europe et d'Amérique*, vol. ii. p. 320.

[2] The law of March 13, 1873, abolished the right of the President to take part in debate, and while allowing him to address the Assembly, ordered the sitting to be suspended immediately after his speech. This was, of course, an attempt to reduce the personal influence of Thiers. (Dupriez, vol. ii. pp. 321–22.)

for nearly two years, when a hostile vote forced Thiers to retire. His successor, Marshal MacMahon, was elected for a term of seven years, and as the new President was not a member of the Assembly, his cabinet became responsible in the parliamentary sense. But although the chief magistrate now held office for a fixed period, and was freed from the caprices of an uncertain majority, still there was no constitution and no permanent organization of the government. The situation was, in fact, a provisional one, prolonged abnormally by the strange condition of politics. The monarchists formed a majority of the Assembly, but they were hopelessly divided into two sections, — the Legitimists, whose candidate was the Comte de Chambord, and the Orleanists, who followed the Comte de Paris. At one moment it seemed not impossible that the Comte de Chambord might become king, and some of his supporters opened negotiations for the purpose; but these were brought to nothing by obstinacy of the Prince himself, who was a true scion of his race, and would not yield one jot of his pretensions. He even refused to accept the tricolor flag that means so much to Frenchmen, and clung doggedly to the ancient white standard of his house. Under such circumstances, a monarchy was out of the question, and so this assembly of monarchists at last set to work to organize a republic; or rather a sufficient number of monarchists, feeling that a republic was, for the time at least, inevitable, joined with the minority to establish a government on the only basis possible.[1] But

The Constitutional Laws.

[1] Very good brief descriptions of the formation of the Constitution

although the republican form was adopted, the institutions that were set up departed essentially from the ideas which the French had been accustomed to associate with that term. The present government, like all political systems that have been created suddenly and have proved lasting, was essentially a compromise. From the French republican principles there was borrowed, besides the name, little more than the election of the chief magistrate, while from the traditions of constitutional monarchy were taken the irresponsibility of the head of the state, and the existence of a second legislative chamber.[1] Now it was natural that no one should feel inclined to construct an ideal system on a hybrid foundation of this kind. Moreover none of the parties regarded the work of the Assembly as final, for the monarchists looked forward to a future restoration of the throne, while their adversaries hoped to place the republic before long on a more secure and permanent footing. Hence the Assembly did no more than provide for the immediate organization of the government in as brief and practical a manner as possible. It passed three constitutional laws, as they are called, which are in the form of ordinary statutes, and very

may be found in Bozérian's *Etude sur la Révision de la Constitution*, and in Professor Currier's *Constitutional and Organic Laws of France*. The latter, published as a supplement to the *Annals of the American Academy of Political Science* (March, 1893), gives a translation into English of all these laws. See also an article by Saleilles on the "Development of the Present Constitution of France." (*Ann. Amer. Acad. of Pol. Sci.*, July, 1895.)

[1] Lebon, *Frankreich* (in Marquardsen's *Handbuch des Oeffentlichen Rechts*), p. 19.

short and concise. One of them, that of February 25, 1875, provides for the organization of the powers of the state. Another, that of February 24, 1875, deals in greater detail with the organization of the Senate. And the third, dated July 16, 1875, fixes the relations of the powers of the state among themselves.

Amendments.

The provisional character of the constitution is clearly seen in the method of amendment. It has been the habit in France to make a sharp distinction between the constituent and legislative powers, the former being withdrawn to a greater or less extent from the control of the Parliament. But in this instance both of the great parties wanted to facilitate changes in the fundamental laws, in order to be able to carry out their own plans whenever a favorable occasion might present itself.[1] A departure from tradition was therefore made, and it was provided that the constitutional laws could be amended by a National Assembly, or Congress, composed of the two branches of Parliament sitting together, which should meet for this purpose whenever both chambers on their own motion, or on that of the President of the Republic, declared the need of revision.[2] The constitutional laws have been

[1] Cf. Borgeaud, *Etablissement et Révision des Constitutions*, pt. iii. liv. ii. ch. viii.

[2] Const. Law of Feb. 25, 1875, Art. 8. It is not provided whether the Chambers shall declare in general terms that there is a need of revision, or whether they shall specify the revision to be made, and this point has given rise to lively debates; but on the two occasions when a revision was actually undertaken, the Chambers passed identical resolutions specifying the articles to be amended. (Lebon, *Frankreich*, pp. 74, 75 ; Saleilles, *op. cit.* pp. 6, 7, 9.)

twice amended in this way. On the first occasion (June 21, 1879), the provision making Versailles the capital was repealed, and thereupon a statute was passed transferring the seat of government to Paris.[1] On the second occasion (August 14, 1884), several amendments were made. Among these one of the most notable changed the provisions relating to the mode of electing senators, and another declared that the republican form of government cannot be made the subject of proposal for revision, — the object of the latter being to prevent the destruction of the Republic by constitutional means. The device of providing that a law shall never be repealed is an old one, but I am not aware that it has ever been of any avail.

This method of amendment has virtually rendered the Parliament omnipotent, for excepting the provision about changing the republican form of government, there is no restriction on its authority. The Chambers cannot, it is true, pass an amendment to the constitutional laws in the form of an ordinary statute, but if they are agreed they can pass it by meeting as a National Assembly. The power of the Chambers is therefore nearly as absolute as that of the British Parliament.[2] The principle, moreover, that the fundamental law cannot be changed by ordinary statute is devoid of legal sanction, for if the Chambers should choose to pass an act of this kind, no court or official could legally prevent its application.[3] But while the

[1] Law of July 22, 1879. This act provides, however, that the National Assembly shall meet at Versailles.

[2] Cf. Saleilles, *op. cit.*, p. 11.

[3] Cf. Laferrière, *Traite de la Jurisdiction Administrative*, vol. ii. p. 5.

constitution imposes no legal restraint on the Parliament, it would be a great mistake to suppose that it had no effect. On the contrary, it has such moral force that any attempt to pass a statute that clearly violated its terms would awake a strong repugnance; and indeed a suggestion by the president of one or other of the Chambers that a bill would be unconstitutional has more than once sufficed to prevent its introduction.[1] On the other hand, the fact that formal amendments can be made only in joint session, and only after both Chambers have resolved that there is a need of revision, has some influence in preventing changes in the text of the constitutional laws, because the Senate, being the more conservative body, and only half as large as the other House, is timid about going into joint session, not knowing what radical amendments may be proposed there, and fearing to be swamped by the votes of the deputies.

Let us now examine the organs of the state in succession, taking up first the Parliament with its two branches, the Senate and the Chamber of Deputies; then turning to the President as the chief magistrate of the Republic, and finally passing to the ministers as the connecting link between the Parliament and the President, and the controlling factor in the machinery of the state.

The Chamber of Deputies.

The composition of the Chamber of Deputies is left to ordinary legislation, except that the constitutional law of February 25, 1875, Art. 1, provides for its election by universal suffrage. By

[1] Lebon, *Frankreich*, p. 23.

statute the ballot is secret, and the franchise extends to all men over twenty-one years of age who have not been deprived of the right to vote in consequence of a conviction for crime, and who are not bankrupts, under guardianship, or in active military or naval service.[1] To be eligible a candidate must be twenty-five years old and not disqualified from being a voter.[2] Members of families that have ever reigned in France are, however, excluded;[3] and in order to prevent as far as possible the use of pressure the law forbids almost every state official to be a candidate in a district where his position might enable him to influence the election.[4] As a further safeguard against the power of the administration, which is justly dreaded by the French Liberals, it is provided that all public servants who receive salaries, except a few of the highest in rank, shall lose their offices if they accept an election to Parliament, and that a deputy who is appointed even to one of these highest offices, unless it be that of minister or under-secretary, shall lose his seat.[5]

The method of election.

The Chamber of Deputies is elected for four years, and consists at present of five hundred and seventy-six members; ten of the seats being distributed among the various colonies, and six allotted to Algiers, while the remaining deputies are chosen in

[1] Arts. 1, 2, and 5 of the Law of Nov. 30, 1875. Poudra et Pierre, *Droit Parlementaire*, sects. 482–84, 498–514.

[2] Law of Nov. 30, 1875, Arts. 6, 7.

[3] Law of June 16, 1885, Art. 4.

[4] Law of Nov. 30, 1875, Art. 12.

[5] *Id.*, Arts. 8, 9, and 11. A deputy appointed to one of these offices may, however, be reëlected (Art. 11).

France.

Scrutin de liste and *scrutin d'arrondissement.*

The method of election has varied from time to time between that of single electoral districts, a system called the *scrutin d'arrondissement*, and that of the *scrutin de liste*, which consists in the choice of all the deputies from each department on a general ticket, the difference being the same that exists between our method of electing congressmen each in a separate district, and our method of choosing presidential electors on a single ticket for the whole State. The *scrutin d'arrondissement* or single district system prevailed from 1876 to 1885, when the *scrutin de liste* was revived;[1] partly, no doubt, in order to swamp the reactionary minority, but also with the hope of withdrawing the deputies from the pressure of petty local interests, which had become lamentably strong, of getting a Chamber of broader and more national views, and of forming a Republican majority that would be more truly a great and united party. The experiment did not last long enough to produce any sensible effect of this kind; and indeed the change seems, on the whole, to have resulted in an increase of the power of the local politicians, who formed themselves into nominating and electoral committees for the department. At the general elections of 1885 the Reactionaries gained rather than lost seats in spite of the *scrutin de liste;* and the disgust of the Republicans with the device from which they had hoped so much was brought to its height two or three years later, by General Boulanger. This singular man, who, after enjoying a marvelous popularity, became in a short time an object of

[1] Law of June 16, 1885.

contempt, if not of ridicule, had been minister of war in one of the recent Republican cabinets. He was forced to resign on account of his enormous expenditure on the army, and the fear that he would plunge the nation into a war with Germany. He then posed as the saviour of the country, and being at the height of his reputation he made use of the *scrutin de liste* to hold a *plébiscite* or popular vote of France piecemeal. Whenever a seat became vacant in a department he stood as a candidate, and if elected he held the seat only until a vacancy occurred in another department, when he resigned to appear as a candidate again. After doing this in several large departments he was able to declare that a considerable part of the French people had pronounced themselves on his side — a proceeding which would have been impossible if the deputies had been elected in five hundred and seventy-six separate districts. He threatened to carry the plan out completely at the general elections, by standing as a candidate in all the departments at once, hoping in this way to get a popular vote of the whole country in his favor; but his success at the by-elections had so frightened the Republicans that they restored the *scrutin d'arrondissement* or single electoral districts before the general election of 1889 took place.[1]

Every large body of men, not under strict military discipline, has lurking in it the traits of a mob, and

[1] Law of Feb. 13, 1889. In order to frustrate more effectually Boulanger's scheme, a law of July 17, 1889, provided that no one should be candidate in more than one district. The meaning and effects of these laws is discussed by Saleilles (*Ann. Am. Acad. Pol. Sci.*, July, 1895, pp. 19–37).

is liable to occasional outbreaks when the spirit of disorder becomes epidemic; but the French Chamber of Deputies is especially tumultuous, and, in times of great excitement, sometimes breaks into a veritable uproar. Even the method of preserving order lacks the decorum and dignity that one expects in a legislative assembly. The President has power to call a refractory member to order and impose a penalty in case he persists; but instead of relying on this alone, he often tries to enforce silence by caustic remarks. The writer remembers being in the Chamber a few years ago when M. Floquet was presiding, — the same man who fought a duel with General Boulanger and wounded him in the throat. A deputy who had just been speaking kept interrupting the member who was addressing the Chamber, and when called to order made some remark about parliamentary practice. The President cried out, "It is not according to parliamentary practice for one man to speak all the time." "I am not speaking all the time," said the deputy. "At this moment you are overbearing everybody," answered the President. This incident is related, not as being unusual or humorous, but as a fair sample of what is constantly occurring in the Chamber. Even real sarcasm does not seem to be thought improper. Thus in a recent debate a deputy, in the midst of an unusually long speech, was continually interrupted, when the President, Floquet, exclaimed, "Pray be silent, gentlemen. The member who is speaking has never before approached so near to the question."[1] These sallies from the chair are an

The Chamber a tumultuous body.

[1] *Journal Officiel* of Nov. 18, 1892.

old tradition in France, although, of course, their use depends on the personal character of the President. One does not, for example, find them at all in the reports of debates during the time Casimir-Perier was presiding over the Chamber. When the confusion gets beyond all control, and the President is at his wits' end, he puts on his hat, and if this does not quell the disturbance, he suspends the sitting for an hour in order to give time for the excitement to subside.

The Senate.

The French Senate consists of three hundred members, and by the constitutional law of February 24, 1875, two hundred and twenty-five of these were to be elected for nine years by the departments, while seventy-five were appointed for life by the same National Assembly that framed that law. The life senators were intended to be a permanent feature of the Senate, and it was provided that when any of them died his successor should be elected for life by the Senate itself. A few years later, however, the Republicans, thinking such an institution inconsistent with democracy, passed the amendment to the constitutional laws, to which a reference has already been made.[1] This, while leaving untouched the provisions relating to the existence and powers of the Senate, took away the constitutional character from those regulating the election of senators, which thus became subject to change by ordinary legislation. A statute was then passed (December 9, 1884) providing that as fast as the life senators died their seats should be distributed among the departments, and thus eventually all the senators

[1] Const. Law of Aug. 14, 1884.

alike will be elected in the same way. There are eighty-six departments in France, and the senators are apportioned by the act among them according to population, so that when the life senators have disappeared the number of seats belonging to a department will vary from two up to ten, while the territory of Belfort, each of the three departments of Algiers, and several of the colonies are represented by one senator apiece.[1] The senators so elected hold office for nine years, one third retiring every three years.[2] They are chosen in each department of France by an electoral college composed of the deputies, of the members of the general council, of the members of the councils of the arrondissements, and of delegates chosen by the municipal councils of the communes of towns.[3] Before 1884 each commune elected only one delegate,[4] but by the law of that year the number of delegates increases with the size of the communes, though much less than in proportion to the population. These communal delegates form a large majority of the electoral college, and hence the Senate was called by Gambetta the Great Council of the Communes of France.[5]

A senator must be forty years old; and since the law of 1884 the disqualifications for this office have been the same as for that of member of the Chamber of Deputies.[6]

[1] Law of Dec. 9, 1884, Art. 2.

[2] *Id.*, Art. 7.

[3] *Id.*, Art. 6.

[4] Const. Law of Feb. 24, 1875, Art. 4.

[5] Saleilles, *op. cit.*, p. 41.

[6] Law of Dec. 9, 1884, Arts. 4, 5, and *Provisions Temporaires.* Law of Dec. 26, 1887. Lebon, *Frankreich*, pp. 63, 64, 67.

The legislative power of the Senate and the Chamber of Deputies is the same, except that financial bills must originate in the latter;[1] but while it is admitted that the Senate may reduce proposals for taxes and appropriations, there is a dispute whether it can increase them or not, and debates on this point are constantly recurring. In practice the Chamber has sometimes accepted augmentations thus introduced, but more frequently the Senate has abandoned them.[2] The Senate has two peculiar functions. First, its consent is necessary for a dissolution of the Chamber of Deputies,[3] a provision designed as a safeguard against the President, who might otherwise dissolve the Chamber in order to attempt a *coup d'état* during its absence; and, second, the President is authorized, with the approval of the Council of Ministers, to constitute the Senate a high court to try any one for an attempt on the safety of the state.[4] This power was used in the case of General Boulanger, who failed to appear for trial, and was condemned in his absence.

Its functions.

With such an organization and powers, an American might suppose that the Senate would be a more influential body than the Chamber of

Its actual influence.

[1] Const. Law of Feb. 24, 1875, Art. 8.

[2] Dupriez, vol. ii. pp. 430–32.

[3] Const. Law of Feb. 25, 1875, Art. 5.

[4] Lebon, *Frankreich*, p. 73, Const. Laws of Feb. 24, 1875, Art. 9, and July 16, 1875, Art. 12. The procedure was regulated by a law of Aug. 10, 1889. By the Const. Law of July 16, 1875, Art. 12, the Chamber of Deputies can impeach the ministers, and in case of high treason the President of the Republic. The impeachments are tried by the Senate. For the interpretation put upon this clause, see Lebon, *Frankreich*, pp. 55–58.

Deputies; but in reality it is by far the weaker body of the two, although it contains at least as much political ability and experience as the other House, and, indeed, has as much dignity, and is composed of as impressive a body of men as can be found in any legislative chamber the world over. The fact is that according to the traditions of the parliamentary system the cabinet is responsible only to the more popular branch of the legislature, and in all but one of the instances where a cabinet in France has resigned on an adverse vote of the Senate, the vote was rather an excuse for the withdrawal of a discredited ministry than the cause of its resignation.[1] The remaining case, which occurred during the present year, is the only one where the responsibility of the ministers to the Senate was fairly raised, and where anything like a real contest took place between the chambers. On this occasion the Senate did certainly force a united and vigorous cabinet to resign, but it was enabled to do so only because the

[1] Dupriez (vol. ii. pp. 453–54) mentions two such cases. One in 1876, when the cabinet, disliking a bill for an amnesty passed by the Chamber of Deputies, proposed in the Senate a compromise, which the latter, averse to any amnesty, rejected. The ministers thereupon resigned, but they had really been beaten in the Chamber of Deputies, and their only hope of restoring their prestige lay in forcing through the compromise. The other case was in 1890, when the Senate by a vote condemning the economic policy of the government, brought about a cabinet crisis. But the ministry was already divided within itself, and had almost broken in pieces a few days before. There appears to have been a third instance of the same kind in 1883. In that case the Fallières ministry resigned because the Senate rejected a bill on the expulsion of members of families that had reigned in France, but here again the cabinet was disunited and in a feeble condition before the vote in the Senate took place. (*Journal Officiel*, Feb. 18 and 19, 1883.)

majority in the Chamber of Deputies was highly precarious, for there can be no doubt that if the cabinet could have relied on the hearty support of the Chamber it would have defied the Senate as it had already done two months before.[1] It has been only in very excep-

[1] The history of this case is as follows: The present Chamber of Deputies when elected contained a decided majority of Conservative Republicans, and for two years the successive cabinets represented their views, but by degrees the party became disintegrated, and in October, 1895, a Radical cabinet was formed, which succeeded in obtaining the support of a majority. Early in the new year the Minister of Justice, not being satisfied that the *Juge d'Instruction*, who was holding the inquest on the southern railroad frauds, was sufficiently zealous in discovering the offenders, took the case out of his hands and intrusted it to another magistrate. On February 11, the Senate, which was strongly conservative, passed a vote censuring this act as an interference with the course of justice. Two days later, the Chamber of Deputies expressed its confidence in the government; whereupon the Senate, on February 15, repeated its former vote. On the 20th, the matter was again brought up in the Chamber of Deputies, and M. Bourgeois, the head of the cabinet, declared that he should not resign so long as he was upheld by the Chamber, which proceeded to reaffirm its vote of the week before. A number of the senators who had been opposed to the cabinet, finding that it would not yield, read in the Senate next day a declaration protesting against the refusal of the ministers to hold themselves responsible to the Senate as a violation of the Constitution, but saying that while as senators they reserved their constitutional right, they did not wish to suspend the legislative life of the country. The Senate thereupon adopted an order of the day approving this declaration, and thus virtually gave up for a time the attempt to make the ministers responsible to itself. (*Journal Officiel*, Feb. 12, 14, 16, 21, and 22, 1896.)

A little later the cabinet brought forward a bill for a progressive income tax, and succeeded on March 26 in getting the Chamber to adopt an order of the day approving of the general principal involved. The order, however, which was somewhat equivocal, was only carried by sixteen votes, and more than half of the deputies were believed to be opposed in their hearts to the tax. The Senate thought its opportunity had come, and again passed a vote of lack of confidence in the ministry, this time on the subject of foreign affairs. (*Journal Officiel*, April 4.) The result

tional cases, therefore, when the Chamber was not firmly opposed, that the Upper House has upset the ministry. Moreover the question at issue in the recent struggle was not whether the cabinet is responsible to the Senate to the same extent that it is to the Chamber, but simply whether the Senate can insist on the removal of a ministry to which it is peculiarly hostile, and which it is absolutely unwilling to trust. No one has ever doubted that under ordinary circumstances the ministers are responsible only to the Chamber. The majority in that body alone is considered in the formation of a cabinet, and an unfavorable vote there on any current matter of importance is followed by a change of ministers, while a similar vote in the Senate is not regarded as a reason for resignation.

was no better than before, but the Senate felt the strength of its position, and was not to be ignored. On April 21, therefore, it took a bolder step by a resolution to postpone the vote on the credits asked for Madagascar "until it had before it a constitutional ministry having the confidence of the two Chambers." Instead of trying to continue the fight Bourgeois resigned, declaring to the Chamber of Deputies that as the representative of universal suffrage it ought to be supreme, but that, owing to the impossibility of insuring proper military service in Madagascar after the vote of the Senate, patriotism obliged him to withdraw. The Radicals in the Chamber succeeded in carrying a vote affirming once more the preponderance of the elect of universal suffrage, and urging the need of democratic reforms ; but a few days later a purely Conservative cabinet presented itself to the Chamber, and obtained a vote of confidence by a majority of forty-three. (*Journal Officiel*, April 22, 24, and May 1.)

The outcome of the affair justified the belief that the Chamber would not engage in a prolonged struggle to support the cabinet ; that while unwilling to turn the ministers out itself, it would not be sorry to have the Senate do so. Had the deputies been so thoroughly in earnest as to force a deadlock between the Chambers, the Senate could not have refused its consent to a dissolution, and would certainly have been obliged to give way if the elections had resulted in a victory for the cabinet.

As a rule the Senate does not decide the fate of the ministries, and hence cannot control their policy. The result is that without sinking to the helplessness of the English House of Lords, it has become a body of secondary importance.[1] At one time it stood very low in public esteem, on account of its origin; for it was created by the Reactionaries in the National Assembly, and was regarded as a monarchical institution; and even after the greater part of its seats were occupied by Republicans, it was suspected of being only half-heartedly in favor of the republican form of government. Its condemnation of Boulanger increased its popularity by making it appear a real bulwark of the Republic against the would-be dictator; but the prejudice against it has by no means disappeared, and the extreme Radicals have never ceased to demand its abolition, although conservative feeling in France will doubtless remain strong enough to prevent such a step. How great the influence of the Senate will be in the future is not easy to foretell. Some people are of opinion that when the life members are gone, many of whom have been distinguished in letters, in science, or in war, it will lose a good deal of the prestige that it retains to-day.[2] But, on the other hand, men of mark are still elected, and now that the Senate is not afraid of being thought lukewarm or hostile to the Republic, and does not feel

[1] In his *Essays on Government* (chap. i.) the writer has tried to prove that this must necessarily be the condition of one of two chambers wherever the cabinet is responsible to the other; and that the cabinet cannot in the long run be responsible to both.

[2] About half of them have already died. Dupriez, vol. ii. p. 374, note.

its existence seriously threatened, it has acquired more boldness and energy.[1] It is highly improbable, moreover, that it will become utterly powerless, so long as the deputies are divided into a number of political groups, and the ministers are not able to speak with authority as the leaders of a great and united party.

Although the Senate has little or no share in directing the policy of the cabinet, it must not be supposed that it is a useless body. On the contrary, it does very valuable work in correcting the over-hasty legislation of the other Chamber, and in case of disagreement often has its own way or effects a compromise.[2]

The National Assembly.

The two Chambers meeting in joint session form what is called the National Assembly, which, as we have seen, has power to revise the constitutional laws. It has one other function, that of electing the President of the Republic. This officer is chosen for seven years, and is re-eligible;[3] the only limit on the choice of a candidate being found in the constitutional law of August 14, 1884, which excludes all members of families that have ever reigned in France, — a provision dictated by the fear that, like Napoleon III., a prince might use the presidency as a step to the throne. The President is at the head of the Republic, but he lives and travels in a style that is almost regal, for the conception of a republic as severe, simple, and econom-

The President of the Republic.

[1] Dupriez, vol. ii. pp. 382–83. The present position and the probable future of the Senate are discussed by Saleilles, *op. cit.*, pp. 37–52.

[2] Dupriez, vol. ii. pp. 413–15.

[3] Const. Law of Feb. 25, 1875, Art. 2.

ical has changed very much in France since the second Empire taught the nation extravagance.[1]

His functions.

The duties of the President, like those of every chief magistrate, are manifold. He is the executive head of the nation, and as such executes the laws, issues ordinances,[2] and appoints all the officers of the government.[3] He has also certain functions of a legislative character, but, except for the right of initiative in legislation, these are not in fact very extensive. He has no veto upon the laws, and although he may require the Chambers to reconsider a bill, the right has never been exercised.[4] With the consent of the Senate he can dissolve the Chamber of Deputies,[5] but this power has also fallen into disuse, because the members of his cabinet are very much under the control of the deputies, who dread the risk and expense of an election; and, in fact, a dissolution has not taken place since President MacMahon's unsuccessful attempt to use it in 1877 as a means of getting a Chamber in sympathy with his views. The President has power to make treaties; but treaties of peace, of commerce, those which burden the finances, affect the persons or property of French citizens in foreign countries, or which change the territory of France (in other words, all the more im-

[1] Cf. G. Channes, *Nos Fautes*, Letter of Jan., 1885; Theodore Stanton in the *Arena*, Oct., 1891.

[2] For the nature of this power, see pp. 42–44, *infra*.

[3] Const. Law of Feb. 25, 1875, Art. 3.

[4] Const. Law of July 16, 1875, Art. 7; Dupriez, vol. ii. p. 369. It is not likely to be used unless after the bill has passed the cabinet that favored it has resigned, and another hostile to it has come in.

[5] Const. Law of Feb. 25, 1875, Art. 5.

portant ones), require the ratification of the Chambers.[1] A declaration of war also requires their consent;[2] but as a matter of fact the government managed to wage war in Tunis and Tonquin without any such consent, alleging at first that the affair was not a war, and afterwards defending itself on the ground that the Parliament by voting credits had virtually sanctioned its course.[3]

His Powers are really exercised by the ministers in his name.

Unlike the President of the United States, the French President is not free to use his powers according to his own judgment, for in order to make him independent of the fate of cabinets, and at the same time to prevent his personal power from becoming too great, the constitutional laws declare that he shall not be responsible for his official conduct, except in case of high treason, and that all his acts of every kind, to be valid, must be countersigned by one of the ministers; and thus, like the British monarch, he has been put under guardianship and can do no wrong.[4] When, therefore, we speak of the powers of the President, it must be remembered that these are really exercised by the ministers, who are responsible to the Chamber of Deputies. The President, indeed, is not usually present at the cabinet consultations (*conseils de cabinet*) in which the real policy of the government is discussed, and as a rule he presides only over the formal meetings (*conseils des mi-*

[1] Const. Law of July 16, 1875, Art. 8.

[2] *Id.*, Art. 9.

[3] See Lebon, *Frankreich*, pp. 46, 47.

[4] Const. Law of Feb. 25, 1875, Arts. 3 and 6.

nistres) held for certain purposes specified by law.[1] He has power, it is true, to select the ministers, and in this matter he can use his own discretion to some extent, but in fact he generally intrusts some one with the formation of a cabinet, and appoints the ministers this man suggests.[2] His duty in these cases is not, however, as simple as that of the English Queen, because, for reasons that will be discussed in the next chapter, there is usually on the fall of a cabinet no leader of a victorious opposition to whom he can turn. A good deal of tact and skill is sometimes required at cabinet crises, and it is said that on a recent occasion the formation of a ministry was due to the personal influence of President Carnot.[3]

Sir Henry Maine makes merry over the exalted office and lack of power of the President. "There is," he says, "no living functionary who occupies a more pitiable position than a French President. The old kings of France reigned and governed. The Constitutional King, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French Republic neither to reign nor yet to govern."[4]

At first sight the situation does, indeed, appear somewhat irrational. When the head of the state is desig-

[1] Lebon, *Frankreich*, p. 53; Dupriez, vol. ii. pp. 350–51 and 367–68, states that the President is often present when important matters are discussed, but cannot influence the decision.

[2] Dupriez, vol. ii. p. 340.

[3] See "France under M. Constans," in *Murray's Magazine* for May, 1890.

[4] *Popular Government*, p. 250.

nated by the accident of birth it is not unnatural to make of him an idol, and appoint a high priest to speak in his name; but when he is carefully selected as the man most fit for the place, it seems a trifle illogical to intrust the duties of the office to some one else. By the constitution of Sieyès an ornamental post of a similar character was prepared for the First Consul, but Napoleon said he had no mind to play the part of a pig kept to fatten. In government, however, the most logical system is not always the best, and the anomalous position of the President has saved France from the danger of his trying to make himself a dictator, while the fact that he is independent of the changing moods of the Chambers has given to the Republic a dignity and stability it had never enjoyed before. It is a curious commentary on the nature of human ambition, that in spite of the small power actually wielded by the President in France, the presidential fever seems to have nearly as strong a hold on public men as in this country.

The *Conseil d'Etat.*

Before proceeding to consider the ministers, there is one other institution which claims attention on account of its past rather than its present position. This is the *Conseil d'Etat* or Council of State,[1] a body whose importance has varied a great deal

[1] Aucoc, *Conférences sur le Droit Adm.*, liv. ii. ch. i. § 3; Ducrocq, *Cours de Droit Adm.*, tit. i. ch. i. sec. i. § iii.; Bœuf, *Résumé sur le Droit Adm.*, ed. of 1895, p. 32 et seq.; cf. Lebon, *Frankreich*, pp. 96–98; Dupriez, vol. ii. pp. 285–316, *passim*, and pp. 481–92; Goodnow, *Comparative Administrative Law*, vol. i. pp. 107–13. See also articles entitled "Le Conseil d'Etat et les Projets de Réforme," by Varagnac, *Revue des Deux Mondes*, Aug. 15 and Sept. 15, 1892.

at different times. Under Napoleon I., and again during the second Empire, in addition to the possession of executive functions, it was a real source of legislation; while at the time of the Restoration and the Monarchy of July it became what it is to-day, a council with high attributes, but very little authority. Except as a court of administrative justice,[1] it has now lost most of its influence; for although it must be consulted before certain classes of ordinances can be issued, and may be consulted on other administrative matters, its advice need never be followed; and in fact the habit of consulting it is said to have become little more than a mere form.[2] The legislative functions of the Council have faded even more completely to a shadow, as is proved by the fact that while the Government or either of the Chambers may seek its aid in the framing of statutes, the privilege is rarely exercised by the ministers, scarcely at all by the Senate, and never by the Chamber of Deputies.

The members of the Council are divided into several classes, but those belonging to the most important class, and the only ones who can vote when the Council sits as a court, are appointed and dismissed at will by the President of the Republic.[3]

[1] For its functions of this nature, see pp. 55–61, *infra*.

[2] "La Réforme Administrative — La Justice," by Vicomte d'Avenel, *Revue des Deux Mondes*, June 1, 1889, pp. 597–98.

[3] The other members are also appointed by the President subject to certain conditions, but as he can dismiss any of them, their tenure of office depends on the pleasure of the cabinet, and in fact by means of resignations or removals, most of the councilors were changed in 1879 in order to make the council Republican. — "Le Conseil d'Etat," Varagnac, *Revue des Deux Mondes*, Sept. 15, 1892, p. 295.

The ministers.

In a parliamentary system the ministers have two distinct functions. One of these is the same as that of the members of the President's Cabinet in the United States, and consists of the management of the departments of the administration. The other is the duty of representing the government in the Chambers, urging the adoption of its measures, and defending its policy against the attacks of its adversaries. These two functions are not necessarily united, and in fact it has been a common habit in some countries to appoint ministers without portfolios, as it is called, that is, without any executive duties at all, in order that they may devote their whole energy to the battles in Parliament.[1] Although there is nothing to prevent such a practice in France, it is not followed to-day, each minister being at the head of a particular branch of the administration. The number of departments, however, and the distribution of the public business among them is not fixed by law, but is regulated from time to time by decree of the President of the Republic. The number of ministers is, therefore, constantly liable to change according to the immediate needs of the public service. At present there are eleven departments or ministries: those of the Interior and Religion; of Justice; of Foreign Affairs; of Finance; of War; of the Navy; of Education and the Fine Arts; of Public Works; of Commerce, Industry, and

[1] This practice virtually exists in England, because some of the offices held by the ministers, such as that of First Lord of the Treasury, and that of Chancellor of the Duchy of Lancaster, involve few or no administrative duties.

Posts and Telegraphs; of Agriculture; and of the Colonies.[1]

The constitutional law of February 25, 1875 (Art. 6), declares that the ministers are collectively responsible to the Chambers for the general policy of the government, and individually for their personal acts. The object of this clause was, of course, to establish the parliamentary system, and in fact the French ministry is responsible to the Chamber of Deputies, as the English is to the House of Commons, and resigns on a hostile vote on any matter of importance. Except, indeed, for the Ministers of War and of the Navy, who are usually military men, the cabinet officers are almost always selected from among the members of Parliament,[2] although the reason for this practice in England does not apply in France, because the ministers have a right to be present and speak in either Chamber, whether members of it or not.[3]

Their responsibility to the Chambers.

But in order to understand fully the position of the French ministers, and their relation to the Parliament, it is necessary to realize their enormous power, and this is due largely to three causes, — the paternal nature of the government, the centralization of the state, and the possession by the executive of authority that in an Anglo-Saxon

Their enormous power and its causes.

[1] Bœuf, *Résumé*, ed. of 1895, pp. 22, 23. The last ministry, that of the Colonies, was, however, created by statute in 1894, and as Bœuf remarks, the Chambers can always prevent the creation of a ministry by refusing to make the necessary appropriations.

[2] Dupriez, vol. ii. p. 336.

[3] Const. Law of July 16, 1875. Art. 6. In practice this privilege is also accorded to their under-secretaries. Lebon, *Frankreich*, p. 52.

country would be lodged with the legislature or the courts of law.

Paternal nature of the government.

On the first of these matters, the paternal nature of the government, there is no need to dwell at length. All governments are growing more paternal at the present day, for a reaction has set in against the extreme *laissez-faire* doctrines preached by Adam Smith, John Stuart Mill, and the English political economists of the earlier school. There is a general tendency to restrain the liberty of the individual and subject him to governmental supervision and control. Such control and supervision are traditional in France, and far exceed anything to which we are accustomed in this country. All trades and occupations are there subject to a great deal more police inspection than with us. They require more generally to be licensed, and are regulated and prohibited by the administrative officials with a much freer hand. And although the liberty of the press and the right of holding public meetings are now substantially realized, the right of association is still very limited, for no society of more than twenty persons, except business companies, and associations of persons pursuing the same profession or trade, can be formed without the permission of the Minister of the Interior or the prefect of the department.[1] It is easy to see how much power all this paternalism places in the hands of the administration.

An explanation of the centralization of the state entails a brief survey of local government; and here

[1] Lebon, *Frankreich*, pp. 32–39; Ducrocq, tit. ii. ch. iii.; ch. iv. sec. iii.

we meet with a deeply rooted French tradition, for centralization was already great under the old régime, and although the first effect of the Revolution was to place the administration of local affairs under the control of independent elected bodies, the pressure of foreign war, and the necessity of maintaining order at home, soon threw despotic power into the hands of the national government. Under Napoleon this power became crystallized in a permanent form, and an administrative system was established, more perfect, more effective, and at the same time more centralized than that which had existed under the monarchy.[1] The outward form of the Napoleonic system has been continuously preserved with surprisingly little change, but since 1830 its spirit has been modified in two distinct ways: first, by means of what the French call deconcentration, that is, by giving to the local agents of the central government a greater right of independent action, so that they are more free from the direct tutelage of the ministers; second, by a process of true decentralization, or the introduction of the elective principle into local government, and the extension of the powers of the local representative bodies. But although the successive rulers of France have pursued this policy pretty steadily, the progress of local self-government has been far from rapid.[2] One reason for

Centralization.

[1] For a short but vigorous comment on Napoleon's system, see G. L. Dickinson, *Revolution and Reaction in Modern France*, ch. ii.

[2] On the subject of local government, I have used Aucoc, *Conférences*, 3d ed.; Bœuf, *Résumé*, ed. of 1895; Leroy-Beaulieu, *Adm. Locale en France et en Angleterre*; Lebon's two works on France; Goodnow, *Comp. Adm. Law*. There is a popular account in Block, *Entretiens familiers sur l'Adm. de notre pays*.

this is the habit of looking to the central authorities for guidance in all matters. Another is a fear on the part of the government of furnishing its enemies with rallying-points which might be used to organize an opposition, — a fear that takes shape to-day in provisions forbidding the local elected councils to express any opinions on general politics, or to communicate with each other except about certain matters specified by law. A third cause of the feeble state of local self-government is to be found in the fact that the Revolution of 1789 destroyed all the existing local divisions except the commune, and replaced them by artificial districts which have never developed any real vitality, so that the commune is the only true centre of local life in the republic.[1] A fourth, and perhaps the most potent cause of all, is the dread of disorder which is constantly present in the minds of Frenchmen, and makes them crave a master strong enough to cope with any outbreak.

Local government. — The department and the prefect.

France is divided into eighty-six departments, at the head of each of which is a prefect, appointed and removed at pleasure by the President of the Republic, but in reality nominated by the Minister of the Interior. The office is, indeed, regarded as distinctly political, and the incumbent is often replaced when the minister changes. The prefect, who is by far the most important of the local officials, occupies a double position, for he is the agent of the central government in regard to those matters of general administration which are thought to concern

[1] Most of the existing communes were in fact created in 1789.

the whole country, and at the same time he is the executive officer of the department for local affairs. In the former capacity he is in theory the immediate subordinate of the Minister of the Interior, but since his duties extend to all branches of the administration, he corresponds in practice directly with any minister in whose sphere of action the matter with which he is called upon to deal may lie. His authority as the agent of the central government is not, however, the same in all cases. Sometimes he is absolutely subject to the orders of the ministers. This is true when he executes general laws and ordinances; but when, for example, he directs the police of the department, or supervises the subordinate local bodies, he proceeds on his own responsibility, and his acts can be overruled by the central government only in case they are contrary to law, or give rise to complaints on the part of the persons affected by them. In pursuance of the policy of deconcentration, the prefect has been given an independent authority of this kind over a large number of subjects, and he was intended to exercise his own judgment in regard to them, but the influence and pressure of the deputies has, it is said, induced him to shirk responsibility as much as possible by referring doubtful questions to the ministers, and hence the centralization has not been diminished as much as was expected.[1] In matters of general administration, the prefect is assisted by a prefectoral council of three or four members appointed by the President of the Republic; but, except when it sits as an administrative

[1] Channes, Letter of October 1, 1884.

court, the functions of this body are almost altogether advisory, and their use has become scarcely more than a form.[1]

The General Council.

As the executive officer for local affairs, the prefect carries out the resolutions of the General Council. This is the representative assembly of the department, and is elected by universal suffrage, one of the members being chosen in each canton for six years, and half of them being renewed every three years. The authority of the body is jealously limited. Its competence is almost entirely confined to affairs that are deemed to have a strictly local interest,[2] and even in regard to these its powers are not absolute, for its votes on certain matters can be annulled by the President of the Republic, and its budget, that is the annual tax levy and list of appropriations, is not valid without his approval. Although the Council has the right of final decision in a considerable class of subjects, its actual power over them is curtailed in a variety of ways. In the first place it does not carry out its own votes, but their execution is intrusted to an agent of the central government, the prefect, who appoints all the officials, manages the public institutions, and signs the orders for all payments of money; the direct control of the council over his performance of these duties extending only to the election of a standing commission which has little more than a right of inspec-

[1] Vicomte d'Avenel, "La Réforme Administrative," *Revue des Deux Mondes*, June 1, 1889, p. 596.

[2] Its functions in relation to the general administration consist in apportioning certain direct taxes, in giving its advice when asked, and in expressing its wishes on matters not connected with general politics.

tion.[1] In the second place, the prefect has an opportunity to exert a great deal of influence over the action of the Council, for not only has he a right to address it, but he prepares the budget and all other business, and in fact it is not allowed to act on any matter until it has heard his report.[2] Moreover the Council is only permitted to sit a very short time. It has two regular sessions a year, whose duration is limited one to a month, the other to a fortnight, and although extra sessions can be held they must not exceed one week apiece. Finally its very existence is insecure, for it can be dissolved by the chief of the state. In general it may be said that in matters falling within its province the General Council cannot do everything it wants, but can prevent almost anything it does not want. Its financial resources are not large,[3] and its attention is confined for the most part to the construction of roads, subventions to railroads, and the care of schools, insane asylums, and other institutions of a similar character.

At one time a hope was entertained that politics might be kept out of the general councils, but it has not been fulfilled, the departmental elections being regularly conducted on party lines.[4] It has therefore

[1] The Council can delegate to the commission a somewhat indefinite class of functions, but it is not in fact a body of much importance. Dupriez, vol. ii. pp. 467–68.

[2] Aucoc, p. 282.

[3] Almost its only source of revenue is the addition of a limited sum to the direct state taxes.

[4] Bozérian, in his *Etude sur la Révision de la Constitution* (pp. 89–90), attributes this to the fact that the local assemblies take part in the election of senators.

been thought best to intrust the supervision of the communes largely to the central government and its representative the prefect, rather than to the councils with their partisan bias, and this, of course, deprives the latter of a part of the importance they would otherwise possess.[1]

The arrondissement.

The next local division is the arrondissement. This is a mere administrative district without corporate personality, with no property, revenues, or expenses of its own, and although it has a sub-prefect and an elected council, neither of them has much power. In fact it has been proposed to abolish the arrondissement altogether.

The canton.

The canton, which is the next subdivision, is really a judicial and military rather than an administrative district, and therefore does not concern us here.

The commune.

We now come to the communes, which are the smallest local entities, but differ enormously in area and population. They vary in size from twenty acres to over a quarter of a million, and they run all the way from a hamlet with a dozen inhabitants to large cities; yet with the exception of Paris and Lyons they are all governed on one plan. The officer

The mayor.

in the commune whose position corresponds to that of the prefect in the department is the mayor. He acts in the same way both as agent of the central government, and as the executive head of the

[1] By the law of 1884 on municipalities, part of the supervision over these bodies, which had previously been in the hands of the general councils, was withdrawn and given to the prefect.

district, but whereas in the prefect the former character predominates, the mayor is chiefly occupied with local matters. It is largely for this reason that, unlike the prefect, he is not appointed by the President, but of late years has been elected by and from the communal council for the length of its own term.[1] The mayor is, however, by no means free from control. So far as he acts as agent of the central government, he is absolutely under the orders of the prefect. Nor is this all. The subject of communal police, which includes the public health and other matters of a kindred nature, is considered a part of the local administration, but the acts of the mayor in regard to it can be annulled by the prefect, who has also power in many cases to issue direct orders of his own. Moreover the police officials require to be confirmed by the prefect,[2] and can be removed only by him.[3] But even these extensive powers of control are not deemed enough, and it is provided that the mayor can be suspended from office for a month by the prefect, or for three months by the Minister of the Interior, and can be removed altogether by the President of the Republic.

The deliberative organ of the commune is the communal council, which varies in size from ten to thirty-six members, and is elected by universal suffrage for four years. Its authority extends to all communal

[1] The office is an honorary one, as the mayor receives no salary.

[2] Or sub-prefect.

[3] The mayor is not free from control in regard to other matters of local interest, for his accounts must be submitted for approval to the prefect, who can order the payment of any expense properly authorized if the mayor neglects to make it.

affairs, except that it has nothing to do with the broad subject of police, although that is regarded for other purposes as a local matter. The recent statute on municipal government lays down the general principle that the decisions of the council on local affairs, when legally made, are conclusive without the approval of any superior administrative official, but in a subsequent section all the most important matters are specially excepted from the rule. The list of exceptions includes almost every financial measure, the construction of roads and buildings, and the sale of communal property.[1] The council has, therefore, very much less power than might at first sight be supposed; and in order to guard against any attempt on its part to exceed these slender privileges, the prefect is given a discretionary authority to suspend it for a month, while the President of the Republic can dissolve it entirely, and appoint a commission with limited powers to rule the commune for two months, when a new election must take place.

Paris.

The general laws of local government already described do not, however, cover the whole field, because a dread of the explosive character and communistic tendencies of the democracy of Paris has prevented the capital from enjoying even the measure of liberty granted to other towns. The city has, indeed, a municipal council composed of eighty elected members and endowed with most of the usual powers, and a general council for the department with limited powers, composed of these same eighty rein-

[1] The official who has power to approve the budget can also inscribe therein certain obligatory expenses.

forced by eight suburban members; but the executive authority is entirely in the hands of the central government. It is lodged in part with the mayors of the twenty arrondissements, who are appointed directly by the President of the Republic; but chiefly with two prefects appointed in the same way. One of these, the Prefect of the Seine, has most of the functions of the ordinary prefect, together with those of a central mayor; while the other, the Prefect of Police, has charge of the police, and is directly responsible to the Minister of the Interior.[1]

This sketch of local government in France shows how centralized the state still remains, what extensive supervision and control the administration keeps in its own hands, and how slight is the measure of real local autonomy if measured by an Anglo-Saxon standard. In fact, the central government still makes itself continually and actively felt in local affairs, and this is for the ministers a great source of power, but also, as we shall see later, a cause of weakness.

Legislative and judicial powers of the executive.

A third source of the enormous power of the ministers in France is the possession by the executive of authority that in an Anglo-Saxon country would be lodged with the legislature or the courts of law. This requires an explanation, for it involves some of the most strange and

[1] Until 1881, the city of Lyons was governed in the same way, and the control of the police is still intrusted to the Prefect of the Rhone. In all cities of over 40,000 people the organization of the police is fixed by decree of the chief of the state, although the members of the force are appointed as in other communes.

interesting peculiarities of French, and, indeed, of continental political ideas.

Legislative decrees and ordinances.

Let us take first the legislative authority of the executive in France. When an English or an American legislator drafts a statute he tries to cover all questions that can possibly arise. He goes into details and describes minutely the operation of the act, in order that every conceivable case may be expressly and distinctly provided for. He does this because there is no one who has power to remedy defects that may subsequently appear. If the law is vague or obscure, it can receive an authoritative interpretation only from the courts by the slow process of litigation. If it is incomplete, it must remain so until amended by a subsequent enactment. In some cases, it is true, an officer or board is given by statute power to make regulations. The Local Government Board and our boards of health furnish examples of this; but such cases are exceptional, and most Anglo-Saxons feel that the power is in its nature arbitrary, and ought not to be extended farther than is necessary. And here it is important to distinguish between rules issued by the head of a department for the guidance of his subordinates and the regulations of which we are speaking. The former are merely directions given to the officials for the purpose of instructing them in their duties, and are binding on no one else. The right to issue them must belong, to some extent, to every one who has other persons under his orders, although they are used much more systematically in France than in the United States. The regulations with which we are concerned here are

of quite a different kind, for they are binding on all citizens who may be affected by them, and have, in fact, the character of laws.

In America the authority to make regulations is delegated by the legislature cautiously, and apart from such an express delegation no officer of the government has power to issue any ordinances with the force of law. But in France all this is very different. Statutes that do not concern the rights of a man against his neighbor, that do not, in other words, form a part of the Civil Code, are often couched in general terms, and enunciate a principle which the Executive is to carry out in detail.[1] Sometimes the President of the Republic is expressly given power to make regulations, but even without any special authority he has a general power to make them for the purpose of completing the statutes, by virtue of his general duty to execute the laws.[2] Such regulations in France are called acts of secondary legislation, and the ordinances of the President in which they are contained are termed *décrets*. The power to make them is not, however, confined to the chief of the state. For matters of inferior gravity the laws often confer a similar authority on the ministers, the prefects, and even the mayors, and in this

[1] Dupriez (vol. ii. p. 377), after remarking this difference between English and French legislation, expresses a regret that the French Parliament has shown a tendency of late years to go more into details.

[2] On the power to issue ordinances in France, see Aucoc, *Conférences*, §§ 52–57, 66, 91, 170; Ducrocq, *Cours*, §§ 61–66, 72–73, 109–10, 210–14; Goodnow, vol. i. pp. 85–87.

Before issuing certain classes of ordinances the President must consult the Council of State, but he is not obliged to follow its advice.

case the edicts are termed *arrêtés*, to distinguish them from the more solemn ordinances of the President.[1] The regulations cannot, of course, be contrary to law, or in excess of the authority of the official who issues them. If they are so and infringe private rights, a process to have them annulled may be instituted before the administrative courts, and in certain limited cases the ordinary courts can also refuse to apply them.[2]

Appropriations.

So much for the power of the executive to make law, but this does not exhaust its encroachments on what we have learned to regard as the province of the legislature, for it is less strictly held to the appropriations voted by the Chambers than is the case with us. The *virements* (that is to say, the use for one purpose of appropriations voted for another), which were an abuse under the Empire, have, indeed, been abolished, except as between different items in the same chapter of the annual budget; but certain chapters are designated each year to which additions can be made by decree of the President issued with the consent of the council of ministers. Moreover, in urgent and unforeseen cases arising when Parliament is not in session, the government has power by means of such a decree, not only to incur the expenses called for by the emergency, but also to open an extraordinary credit on its own authority and borrow the money that it needs.[3]

[1] Lebon, *Frankreich*, p. 23; Aucoc, Ducrocq, *ubi cit.*

[2] Laferrière, *Traité de la Jur. Adm.*, liv. iii. ch. i. sec. II.; liv. vi.; liv. vii. ch. i. sec. IV.

[3] In both cases notice of the decree must be laid before the Chambers within fourteen days from their next meeting. (Lebon, *Frankreich*, p. 162.) It is worth while, moreover, to note in passing that there is

One may, perhaps, be pardoned for dwelling at somewhat greater length on the judicial powers of the executive in France, both because they are so little understood by English-speaking people, and because their origin may be traced to a tradition which has its roots far back in the past.

Judicial powers of the executive.

The characteristic difference between the political history of England and that of France is to be found in the fact that the English, though influenced by each new spirit of the age, have never yielded entirely to its guidance, while the French have always thrown themselves into the current, and, adopting completely the dominant ideas of the time, have carried them to their logical results. Thus, in the Middle Ages, the feudal system never became fully developed in England as it did in France. Again, when absolute monarchy came into vogue, the British sovereign was not able to acquire the arbitrary power of the Bourbons. And, lastly, democracy made its way neither so rapidly nor so thoroughly on the north as on the south of the Channel. The result is that in France the institutions of any period have been adapted almost exclusively to the wants of the time in which they were produced, and in the succeeding age it has been thought necessary to destroy them and devise new ones more in harmony

Characteristic difference between English and French history.

no effective process for bringing to account a minister who exceeds the appropriations. He can, indeed, be impeached, but except in times of great excitement this would not be done if the money had been expended for public purposes ; and as regards civil liability, there is no court that has power to compel him to refund the sums which he has spent illegally.

with the new conditions;[1] whereas in England there has been no need of such sweeping changes, and it has been possible to preserve in a modified form many of the most important features of the government. Hence the permanence and continuity of the political system.[2] Let us inquire how these facts have affected the development of judicial and administrative institutions in the two countries.

Early development of the royal power in England.

The Norman kings of England strove deliberately to check the growth of the feudal system, and their successors constantly followed the same policy. Now the essence of the feudal system consisted in the blending of public and private law by making all political relations depend on the tenure of land; and, in fact, according to the strict feudal theory, no man had direct relations with any superior except his immediate overlord. Every great vassal of the crown, therefore, had jurisdiction over all the tenants on his estate, which he exercised by holding a court of his own for the administration of justice among them. The English kings resisted this principle, and tried to bring their power to bear directly on all the people of the realm. For this purpose sheriffs were appointed to represent the crown in the counties, and what was of more permanent importance, the gravest crimes, actions for the possession

The judicial system.

[1] This is the more striking because the French are in some ways more conservative than the English, as, for example, in their retention to the present day of public executions. M. Lebon truly remarks (*France as It Is*, p. 86): "People have no idea of the spirit of routine and conservatism which prevails in France."

[2] Cf. Freeman, *Growth of the English Constitution*, pp. 63–66.

of land, and subsequently other matters, were brought within the jurisdiction of the *Curia Regis*.[1] As early as the reign of Henry I., moreover, royal officers were commissioned to travel about the country holding court, a practice which was renewed in a more systematic form by Henry II., and has continued with short interruptions to the present day.[2] The chief object of the early kings in sending out the itinerant justices, as they were called, was no doubt financial; for their duties consisted in assessing taxes, collecting fines for violation of the law, and administering justice, which was in itself a source of no small profit in the Middle Ages.[3] The functions of the justices in the collection of revenue grew, however, less and less prominent, but their administration of justice became of permanent importance, and in regard to this two tendencies were at work. In the first place, the royal judges adopted new methods of procedure and gradually developed the trial by jury, while the baronial courts clung to the ordeal and other barbaric forms of trial.[4] "The gladsome light of jurisprudence," as Coke called it, came

[1] See Pollock & Maitland, *History of English Law*, vol. i. pp. 85–87 and chs. v. and vi.

[2] The institution of traveling judges was not new. It had been used by Charlemagne (Hallam, *Middle Ages*, ch. ii. part ii. 5), and a similar practice was employed by Alfred, Edgar, and Canute (Stubbs, *History of England*, xi. §§ 127, 134). On the itinerant justices, see Stubbs, *Ib.* xi. 127 ; xii. 141, 145, 150 ; xiii. 163 ; xv. 235 ; Gneist, *Englische Verfassungsgeschichte*, pp. 148, 224–28, 305 (note), 318–19, 447. Pollock & Maitland, vol. i. pp. 134, 149, 179 ; Franqueville, *Le Système Judiciaire de la Grande Bretagne*, vol. i. pp. 149 *et seq.* The royal duty of sending the justices in eyre is one of those insisted upon in Magna Charta, § 18.

[3] Stubbs, *Ib.* xi. 127.

[4] Cf. Stubbs, *Ib.* xiii. 164 ; Gneist, *Ib.* p. 142.

with the king's courts, and hence it is not surprising that they supplanted the baronial courts, and in time drew before themselves all the important lawsuits. In the second place, the commissions which had at first been issued to high officials, barons, and knights, became confined to regular judges, and about the time of Edward I. were given only to the members of the royal courts at Westminster.[1] The same body of judges, therefore, expounded the law in all parts of the realm, and hence England, alone among the countries of Europe, developed a uniform national justice called the common law.[2] The people naturally became attached to this law and boasted of the rights of Englishmen, while the courts that were the creators and guardians of the law became strong and respected.

The administrative system.

The very fact that the judicial branch of the government became so highly developed made the centralization of the administration unnecessary. At the time when the itinerant justices first went on circuit, administration in the modern sense was of course unknown, and such local affairs as needed attention were regulated by the shire moots and other local meetings.[3] The sheriff, indeed, represented the crown, but his powers were curtailed more and more, until, apart from his command of the military forces of the county, he became little more than an officer of the courts.[4] When the local administra-

[1] Gneist, *Englische Verfassungsgeschichte*, p. 318; Stubbs, *History of England*, xv. 235.

[2] Cf. Hallam, *Middle Ages*, ch. viii. part ii. 3.

[3] Stubbs, *Ib.* xv. 205.

[4] On the powers of the sheriff, see Stubbs, *Ib.* xiii. 163, xv. 204–7; Gneist, *Ib.* pp. 115–20, 297.

tion grew more important, it was confided not to him, but to justices of the peace, who, though nominally selected by the king, were never strictly under his orders, and in time became almost completely independent, except for the purely judicial control exercised by the Court of King's Bench.[1]

Development of the direct royal power in France.

In England, therefore, the royal power came early into contact with the people all over the kingdom by means of the courts of law, and the judicial system became highly centralized; while the local administrative institutions developed slowly, and through them the king's authority was little felt. In France, on the other hand, the course of events was very different, for the royal power came into direct contact with the people at a much later date, and therefore in quite another form. When the feudal system became established, the great vassals set up their own courts and succeeded in excluding the royal judges from their fiefs, so that the direct jurisdiction of the crown became confined to the comparatively small part of the country which was included in the royal domain. Gradually, indeed, as the feudal system began to lose its strength, the king's jurisdiction encroached upon that of the vassals, — a process which was carried on both by insisting on the right of appeal to the royal tribunals, and by reserving for the exclusive cognizance of the king's courts a somewhat indefinite class of cases

The judicial system.

[1] Gneist, *Englische Verfassungsgeschichte*, pp. 298 *et seq.*, 468 *et seq.*; and see the note at the end of this chapter.

known by the name of *cas royaux*.[1] But this process aroused serious resistance on the part of the territorial lords, and it was not until the sixteenth century that the crown judges possessed the universal authority they had obtained in England more than three hundred years earlier. So strong, in fact, did the local jealousy of the Parliament of Paris (the king's high court of justice) remain, that after the great fiefs fell into the hands of the crown, they were not placed under the jurisdiction of that tribunal, but were given independent parliaments of their own.[2] At the outbreak of the Revolution there were thirteen separate parliaments, so that every considerable province had a distinct body of magistrates.[3] Under these circumstances, the courts could not create a uniform national justice like the English common law, and although since the revolution such a uniform system has been provided by the Code, this does not strengthen the hands of the judges, but has rather the opposite tendency. In the first place, it is not their work, and hence does not redound to their glory; and secondly, by weakening the force of precedent, it diminishes the importance of judicial decisions. This review of the history of the courts of law shows

[1] Aubert, *Le Parlement de Paris de Phillippe le Bel à Charles VII.*, ch. i. sec. I.; *Hist. du Parl. de Paris, 1250–1515*, liv. ii. ch. i.; Du Bois, *Hist. du Droit Criminel de la France*, part i. ch. i.; Esmein, *Hist. du Droit Français*, part i. tit. ii. ch. i.; *Hist. de la Proc. Crim.*, part i. tit. i. ch. i. sec. II.; ch. ii. sec. I.; Hallam, *Middle Ages*, ch. ii. part ii. 5.

[2] Du Bois, part i. ch. ii. § 2; Bastard d'Estang, *Les Parlements de France*, vol. i. pp. 36–38; Esmein, *Hist. du Droit Français*, tit. ii. ch. i. sec. I. § 2, v.

[3] For the dates of the creation of the provincial parliaments, which run from 1444 to 1775, see Bastard d'Estang, vol. i. p. 189, note, and Esmein, *ubi supra*.

clearly why they have not attained in France the same power and authority as in Anglo-Saxon countries.[1]

The administrative system.

The French courts of law were weak because the royal authority did not come into direct contact with the people at the time when public and private law were everywhere blended, when the tone of thought was peculiarly legal, and when political power was chiefly exercised in a judicial or semi-judicial form.[2] It made itself felt at a later date, and especially as the restorer of order after the anarchy caused by the hundred years' war. Its presence brought peace and prosperity, and naturally enough the organs which it employed acquired a high degree of vigor. Now, at this period, administration, in the modern sense, was becoming important, and as the royal authority came to be exercised by commissioners or intendants who had, indeed, certain judicial powers, but whose functions were chiefly administrative,[3] the administration developed an influence and a strength which the courts have never attained. The administrative system became centralized, and grew to be the most important factor in the government.[4] All classes of the people looked to it for protection;[5] in fact, it took,

[1] Since the Revolution, the courts have, of course, been reorganized on a centralized basis.

[2] On the relative importance attributed to law in the Middle Ages, and in later times, see Stubbs's chapters on the Characteristic Differences between Mediæval and Modern History, in his *Lectures on Med. and Mod. Hist.*

[3] Chéruel, *Dic. des Inst. de la France*, "Intendants des Provinces;" Esmein, *Hist. du Droit Français*, tit. ii. ch. v. § 2.

[4] Cf. De Tocqueville, *An. Reg. et la Rev.*, liv. ii. chs. ii. iii.

[5] De Tocqueville speaks of all classes as looking on the government as a special providence. *Id.*, ch. vi. (7th ed. pp. 100–103).

to a great extent, the place which the judiciary filled in England, and in those countries which had inherited the English principles.

Effect of the doctrine of the separation of powers.

This difference in the relative authority of the courts and the administration was intensified, so far as the United States and France were concerned, by the political philosophy of the last century. Montesquieu, in his "Spirit of the Laws," proclaimed the importance of separating the executive, legislative, and judicial powers, and the maxim was eagerly accepted on both sides of the Atlantic, though in very different senses. Our ancestors, anxious to maintain the independence of the courts and the sacredness of private rights, took the principle to signify the necessity of so protecting the courts from the control or influence of the other branches of the government that they might be free to administer justice without regard to the official position of the litigants or the nature of the questions involved. They meant to preserve the English tradition that there is only one law of the land to which every one is subject, from the humblest citizen to the highest officer. The French, on the other hand, had acquired no great passion for law, or for the rights of the individual, and did not admit a claim on the part of any one to delay or overturn the public interests in order to get his own grievances redressed. Moreover, they had seen the Parliament of Paris interfere with the government by refusing to register the edicts of the King; for although this tribunal had failed to acquire judicial supremacy, it had retained a good deal of political power, which it used during the years preceding the

Revolution to resist innovations.[1] Such a power might not be disliked as a means of opposing an unpopular court party, but it could not be tolerated for a moment when the reins of government were seized by men who believed themselves commissioned to reform the world. The French statesmen, therefore, took Montesquieu's doctrine in the sense that the administration ought to be free to act for the public weal without let or hindrance from the courts of law. The Declaration of the Rights of Man proclaimed in 1789 that a community in which the separation of powers was not established had no constitution; and a statute of the next year, on the organization of the tribunals, gave effect to the maxim as it was understood in France by providing that the judges should not interfere in any way with the work of administrative authorities, or proceed against the officers of the government on account of their official acts.[2] The American and French applications of the doctrine of the separation of powers are both perfectly logical, but are based on different conceptions of the nature of law. The Anglo-Saxon draws no distinction between public and private law. To him all legal rights and duties of every kind form part of one universal system of positive law, and so far as the functions of public officials are not regulated by that law, they are purely matters of discretion. It follows that every legal question, whether it involves the power of a public officer or the construction of a private contract, comes

[1] Cf. Edward J. Lowell, *The Eve of the French Revolution*, p. 105.

[2] Aucoc, *Conférences*, part i. liv. i. ch. i.; Bœuf, *Résumé*, part iv. sec. II.

before the ordinary courts.[1] In France, on the other hand, private law, or the regulation of the rights and duties of individuals among themselves, is treated as only one branch of jurisprudence; while public law, which deals with the principles of government and the relations of individuals to the state, is regarded as something of an entirely different kind. Of course every civilized government must strive to treat all its subjects fairly, and hence, in the course of administration, questions of justice must arise; but as these do not concern the rights of a man against his neighbor, they are not classed in France with private law. It is felt that, unlike questions of private law, they ought not to be decided solely by the application of abstract principles of justice between man and man, but must be considered from the broad standpoint of public policy. Now the domain of the ordinary French courts is private law alone, and it is quite logical to regard any attempt on their part to judge administrative acts and thus pass on questions of public policy, as an attempt to go beyond their proper sphere of action and invade the province of the executive.[2]

The principle of withdrawing questions of public law from the ordinary courts was not new. It existed in

[1] This principle, like all others in Anglo-Saxon countries, is not carried out with absolute consistency. Thus the various commissions in America on railroads, interstate commerce, etc., partake of the nature of the French administrative tribunals.

[2] The French, like the Americans, have not applied their principles quite strictly, for Criminal Law ought to be a branch of Public Law (Aucoc, Introd. § 1), but it has been put into the charge of the ordinary courts.

practice under the old régime,[1] but was extended and systematized after the Revolution. The protection of officials from suit or prosecution was formally incorporated into the Constitution of the year VIII. (1799), and remained in force until after the fall of Napoleon III., when it was repealed by a decree of the Government of the National Defense.[2] This decree was intended to remove all hindrances in the way of bringing government officials before the ordinary courts, but it had very little effect, because the Tribunal of Conflicts held that it applied only to the personal protection of officials, and did not affect the principle of the separation of powers, which, as understood in France, forbids the ordinary judges to pass upon the legality of official acts.[3] Questions of this kind, therefore, are still reserved exclusively for the administrative courts, — tribunals created especially for this purpose, and composed of officials in the service of the government. Criminal cases are, indeed, an exception to the rule,[4] but this is of no great practical importance, because as force is pretty sure to be on the side of the police, it is no real protection to the individual to know that he can-

The administrative courts.

[1] See Laferrière, *Traité*, liv. i. ; De Tocqueville, *An. Reg. et la Rev.*, book ii. ch. iv. ; Varagnac, "Le Conseil d'Etat," *Revue des Deux Mondes*, Aug. 15, 1892.

[2] Decree of Sept. 19, 1870.

[3] Arrêt, 30 Juillet, 1873, "Affaire Pélétier," Dalloz, *Jur. Gen.*, 1874, part iii. p. 5 ; Leferrière, *Traité*, liv. iii. ch. vii. ; Aucoc, *Conf.*, liv. v. ch. ii. ; Goodnow, *Comp. Adm. Law*, vol. ii. pp. 172–76.

[4] Laferrière, *Traité*, liv. iii. ch. vi. But even this exception is not absolute. See, also, a discussion of the subject in Dalloz, 1881, part iii. p. 17, note.

not be condemned for resistance; and on the other hand the officials concerned run no risk of punishment for illegal acts committed in obedience to orders, because the government can easily manage to prevent their being brought to trial, and can pardon them if convicted. In France, therefore, there is one law for the citizen and another for the public official, and thus the executive is really independent of the judiciary, for the government has always a free hand, and can violate the law if it wants to do so without having anything to fear from the ordinary courts. Nor is the danger of interference on the part of the administrative tribunals as great as it would be in the case of the ordinary judges, because the former can be controlled absolutely in case of necessity; and, in fact, they are so much a part of the administration itself that they fall into the province of the Interior and not that of Justice.[1] The independence of the ordinary judges is secured by a provision which prevents their removal or transfer to another court, without the approval of the Court of Cassation, the final court of error.[2] But the

[1] It would be absurd to suppose that the government always extorts a favorable judgment. This was clearly shown about a year ago in a famous case, which illustrates at the same time the degree of respect entertained for the decisions of the administrative courts. The Minister of the Interior and the railroads disagreed about the interpretation of a statute relating to the state guarantee of interest on the securities of the roads. The matter was brought before the Council of State, which decided in favor of the railroad. Thereupon the Minister of the Interior resigned, but the rest of the cabinet felt bound to abide by the decision. A discussion was, however, raised in the Chamber of Deputies, which in effect censured the ministers for submitting the matter to the Council of State, and thereby caused the cabinet to resign.

[2] This provision was suspended by statute for three months in 1883,

judges of the administrative courts enjoy no such protection, and can be removed by the President at any time.[1] The result is that, although a great mass of administrative law has slowly grown up from the decisions of these courts,[2] and personal liberty is much more respected than under the Empire, yet the courts themselves cannot be considered entirely judicial bodies, and are far from providing the rights of the citizen with a complete guarantee, at least where political questions are involved.[3]

on the ground — which seems to have had at least some justification — that the existing judges were partisan and influenced by anti-republican opinions. The suspension and the removals made in pursuance of it struck a severe blow at the independence of the judiciary, for the judges learned that their function was to render service rather than to administer justice, and it was some time before the bench began to recover its judicial tone. (For the causes and effects of this action, see J. Reinach, *La Politique Opportuniste*, pp. 269–70 ; Vicomte d'Avenel, "La Réforme Administrative — La Justice," *Revue des Deux Mondes*, June 1, 1889, pp. 582–83; Jules Simon, "The Stability of the French Republic," *Forum*, 10, p. 383; Comte de Chaudordy, *La France en 1889*, p. 36, and a somewhat violent article by Hurlbert on "The Outlook in France," *Fortnightly Review*, 55, p. 347.) Saleilles (*Ann. Am. Acad. Pol. Sci.*, July, 1895, p. 16, note) remarks that the consequences of this law still weigh heavily on the country.

[1] Aucoc, *Conf.*, vol. i. pp. 156–57 ; Bœuf, *Résumé*, pp. 39–40. The members of the Council of State who are qualified to sit as administrative judges are said to be always selected from the political friends of the government (Dupriez, *Les Ministres*, vol. ii. pp. 482–83).

[2] Unlike the civil law, the administrative law has never been codified, and indeed it could not be without destroying the element of discretion which is the reason for its existence. So far as it is not contained in statutes and ordinances, it has developed, like the English Common Law, by decision and precedent, and hence the sources for studying it are the reported cases and the writings of jurists such as those heretofore cited.

[3] Lebon, *France as It Is*, pp. 101–2 ; Goodnow (*Comp. Administrative Law*, vol. ii. pp. 220–21, 231) remarks that the administrative courts have shown themselves more favorable to private rights than the ordinary

It is evident that with two sets of courts, neither of which is superior to the other, disputes about jurisdiction must constantly arise. Such is in

The Court of Conflicts.

courts, and he cites a celebrated instance where the former set aside an obnoxious ordinance of a prefect which the latter had held valid. But in the first place, this proves rather the timidity of the ordinary courts as at present organized, than the eagerness of the administrative courts to guard personal rights ; and in the second place, to set aside an ordinance which has no political significance is a very different thing from protecting an individual against a deliberate attack on the part of the government. Mr. Goodnow himself points out (vol. ii. pp. 226–27) that the administrative courts have decided that they will not interfere with acts of a political character, and have held that the illegal destruction of a newspaper in a time of public disturbance was an act of this kind. The cases referred to occurred, it is true, during the second Empire, but it is not improbable that these precedents would be followed to-day in any period of popular excitement. The practice of arbitrary arrest and the impossibility of getting redress has often been a grievance in France ; and it may be noticed that the guarantees of personal liberty and private right are in general the same to-day that they were at the time of Napoleon III.

In regard to the relative merits of the English and French methods of dealing with public officials, the former gives to the citizen a better protection against oppression, but there can be no doubt that the latter has certain advantages from the point of view of administrative efficiency. Mr. Goodnow discusses the various aspects of the question in his *Comparative Administrative Law*, a book which is not only an admirable treatise, but has a peculiar value for Americans, because the author is completely imbued with continental ideas. He has, indeed, so little sympathy with Anglo-Saxon legal principles that he thinks the ordinary courts ought not to be allowed to decide questions of public law, because they have a tendency to apply to them the principles of private law (vol. i. p. 13).

It is somewhat curious in this connection to observe that French writers often assert the inability of an ordinary court to protect the public against illegal ordinances, because it can only decide the case at bar, whereas an administrative court has power to annul the ordinance altogether ; a remark which shows an entire failure to comprehend the force of precedent in a judicial system like that of England. (See, for example,

fact the case, and a special tribunal has been appointed to determine these disputes, or conflicts as they are called.[1] It is composed of the Minister of Justice, of three members of the highest court of law, the Court of Cassation, of three members of the highest administrative court, the Council of State (each of these sets being selected by their own court), and of two other persons elected by the foregoing seven. All the members are chosen for three years, except the Minister of Justice. This officer has the right to preside, and thus his presence gives to the administration a majority in the tribunal. A striking example of the working of the system was presented in 1880, when the government issued decrees for the suppression of all monastic orders not authorized by law. There seems to have been grave doubt about the legality of the decrees, and the victims brought suits in the ordinary courts in several parts of France. Most of these courts held that they were authorized to entertain the suits, and in some cases they went so far as to order the persons who had been expelled from their establishments to be restored to possession pending the trial;[2] but the government raised the question of jurisdiction, and the Tribunal of Con-

Varagnac, "Le Conseil d'Etat," *Revue des Deux Mondes*, Sept. 15, 1892, pp. 290–91.)

An admirable comparison of the English and French systems may be found in Professor Dicey's *Law of the Constitution*, and especially in chapter xii.

[1] Aucoc, *Conf.*, vol. i. § 406; Bœuf, *Résumé*, 15th ed. pp. 542–43.

[2] Some of the decisions to this effect may be found in Dalloz, *Jurisprudence Générale*, 1880, part iii. pp. 57–62, and 80. In the note to page 57 there is a list of some of the other similar decisions and a discussion of the law.

flicts decided that the ordinary courts were not competent to deal with the matter.[1] It is a significant fact, which seems to show a lack of confidence in the impartiality of the administrative courts, that the persons injured did not bring the question of the legality of the decrees before the Council of State.[2]

When an ordinary court has assumed jurisdiction of a case, the question of competence can be raised only by the prefect, and not by a party, for the principle that the ordinary courts cannot determine the legality of official acts is intended solely as a protection to the administration.[3]

Jurisdiction of the administrative courts.

It is not quite accurate to say that the ordinary courts can consider the validity of no official act, and, indeed, the line between the jurisdiction of the ordinary and the administrative courts does not follow any strictly logical principle.[4] Questions of indirect taxes, for example, and those relating to the lesser highways (*petite voirie*), come before the ordinary courts, while those arising under the direct taxes, or relating to the greater highways (*grande voirie*), come before the administrative tribunals. The competence of the various administrative

[1] Arrêts de Nov. 4, 5, 13, 17, and 20; Dalloz, 1880, part iii. pp. 121–32. These cases are reported with unusual fullness.

[2] At least I can find no decision on the subject by the Council of State reported in Dalloz. For criticisms on the conduct of the government, see Jules Simon, *Dieu, Patrie, Liberté*, ch. vi.; and Channes, *Nos Fautes*, letters of July 12 and Oct. 27, 1880.

[3] Aucoc, *Conf.*, vol. i. § 404; Bœuf, *Résumé*, 15th ed. p. 547.

[4] On this subject, see Laferrière's great work, *Traité de la Jurisdiction Administrative.*

courts is no less complicated. The prefect and the mayor have each a very limited jurisdiction. That of the prefectorial councils, on the other hand, is very considerable, although as a matter of fact these councils are occupied almost altogether with questions of taxes, and in these, as a rule, they follow the advice of the assessors.[1] But by far the most important administrative court is the Council of State, which has a special section or committee to attend to the *contentieux*, as this class of litigation is called. The Council not only hears appeals from the lower administrative tribunals, but has also original jurisdiction in many important cases, and in fact recent practice is tending to establish the principle that the Council of State is the judge of all administrative matters in the absence of special provisions of law. The number of cases brought before it is very large, and has increased so rapidly that the section for the *contentieux* is badly in arrears, and it has been proposed to create a second section to relieve the pressure.[2]

The state of siege.

Such is the legal position of the administration in ordinary times, but in case of war or insurrection it can be given far greater powers, by a proclamation of the state of siege. This can be made by statute, or if Parliament is not in session, it can be made by the President; but in that case, in order to meet the danger of a *coup d'état*, which is ever present

[1] Vicomte d'Avenel, "La Réforme Administrative — La Justice," *Revue des Deux Mondes*, June 1, 1889, p. 596.

[2] For the number of cases decided by the administrative courts, see the tables (through 1886) in Laferrière, liv. i. ch. v.

to the eyes of Frenchmen, it is provided that the Chambers shall meet as of right in two days.[1] Within the district covered by the state of siege, the military courts can be given criminal jurisdiction, and can punish any offenses against the safety of the Republic or the general peace. They can search houses by day or night, expel from the district any non-residents, seize all arms, and forbid any publications or meetings which are liable to disturb the public order.[2]

Effect of the French system on the position of the executive.

I have dwelt at some length on what, from an Anglo-Saxon point of view, may well be called the legislative and judicial powers of the executive in France, because these things are entirely foreign to our own political ideas and experience, and because they exist in some form in almost every country on the continent of Europe.

When we consider the paternal character of the government, the centralization of the state, and the large share of authority vested in the executive department, we cannot fail to see that the ministers in whose hands this vast power is lodged must be either very strong or very weak. If they are able to wield it as they please, and are really free to carry out their own policy, they must be far stronger than any officer or body in Great Britain, and immeasurably stronger than any in our federal republic. But, on the other hand, the very immensity and pervasiveness of their power, the fact that it touches closely every interest in the country, renders them liable to pressure from all sides.

[1] Law of April 3, 1878, Poudra et Pierre, § 79.

[2] Poudra et Pierre, § 76, gives the text of the law.

It becomes important for every one to influence their action, provided he can get a standpoint from which to bring a pressure to bear. This standpoint is furnished by the Chamber of Deputies, for the existence of the ministry depends on the votes of that body. The greater, therefore, the power of the minister, and the more numerous the favors he is able to bestow, the fiercer will be the struggle for them, and the less will he be free to pursue his own policy, untrammeled by deputies, whose votes he must win if he would remain in office. A Frenchman, who is eminent as a student of political philosophy, and has at the same time great practical experience in politics, once remarked to the author, "We have the organization of an empire with the forms of a republic."[1] The French administrative system is, indeed, designed for an empire, and would work admirably in the hands of a wise and benevolent autocrat who had no motive but the common weal; but when arbitrary power falls under the control of popular leaders, it can hardly fail to be used for personal and party ends; for, as a keen observer has truly said, the defect of democracy lies in the fact that it is nobody's business to look after the interests of the public.[2]

[1] Gneist expresses the same idea: "*Es entsteht der unvermittelte Gegensatz einer republikanisch gedachten Verfassung mit einer absolutistisch organisirten Verwaltung.*" (*Die Preussische Kreisordnung*, p. 7.)

[2] The late Professor Gneist, perhaps the most profound student of the comparative history of England and the continent, from the point of view of the working of parliamentary government, demonstrated that the success of the system in England has been due to certain underlying institutions which have made that country a commonwealth based upon law (*Rechtsstaat*). His chief works on the subject are his *Englische Verwaltungsrecht; Self-government, etc., in England; Der Rechtsstaat*, and

Verwaltung, Justiz, Rechtsweg. In the opening words of the preface to the last of these, the keynote of the whole theory is struck when he says, "*Die parlamentarische Regierung Englands ist eine Regierung nach Gesetzen und durch Gesetze.*"

His views may be briefly summarized as follows: In England alone, among the countries of Europe, the royal power became consolidated early, for the Norman kings broke down the resistance of the great vassals and made their authority effective over the whole realm, drawing military, judicial, and police matters into their own hands. By this process, the antagonism and jealousy of the different classes was crushed; while the land-owning nobility found their only chance of political activity in exerting a restraint upon the crown by means of judicial action and statutes. Their first great achievement was Magna Charta, with which the parliamentary era begins. The struggle was continued in the Barons' war, and resulted in the evolution of the House of Commons.

From time to time Parliament enacted statutes which supplemented the customary law, and furnished a solid basis for the decisions of the courts. The existence of permanent statutes, as distinguished from royal edicts in their nature changeable, is one of the chief foundations of the reign of law in England, for the statutes in ever increasing quantity regulated the administration rigorously and uniformly throughout the land.

Another factor that contributed to the same result was the method in which the statutes were executed, and this in turn may be traced to the early extension of the royal power. The administrative laws were carried out by means of a large number of officers, of whom the most important were the justices of the peace. These were appointed by the king, and hence acted in behalf of the state instead of local or class interests; but, on the other hand, they were in fact the greater land-owners of the county, not professional officials bound to do the bidding of the court. They conducted the local administration according to judicial forms, subject on purely legal questions to the control of the King's Bench by means of writs of *Certiorari*, *Mandamus*, etc., the effect being to prevent arbitrary abuse of power, and to insure legality in the execution of the law. In short, as Gneist expresses it, the English developed an elaborate and effective system of administrative justice.

The method of administration also produced self-government, by which Gneist means not the control of local matters by bodies elected to represent local interests, but an organization of the whole community for the service of the state, so arranged that the classes most capable by their wealth and position for government bore the burdens and administered the affairs of their neighborhood. The result was brought about in

England chiefly by means of the office of justice of the peace, which gradually became both an honor and a duty attached to the ownership of land. Thus the gentry carried on the local government; but this was no mere privilege which they enjoyed for their own benefit, because they also paid the taxes and ruled, not for the profit of their own class, but as officers of the state for the common good and in strict accordance with fixed laws. Hence, instead of the hostility of classes that existed all over the continent, there developed harmonious local communities with true public opinions on political questions. Moreover, the habit of sitting as justices gave to the gentry a sense of public duty and a love for law. Now the House of Commons was virtually composed of the representatives of the gentry, who carried into it their sentiments. The members of Parliament, therefore, understood law, and had a deep sense of its importance, while their training caused them to act for the good of the whole state rather than the benefit of their own class. This rendered possible the formation of real national parties, based on differences of opinion, not on class interests; parties whose action in Parliament was restricted by a respect for law.

Gneist points out how different has been the history of France. Feudalism there was at first too strong for the royal power to overcome, and hence the community, instead of being consolidated, split into hostile classes. The king found himself at the head of a state whose organization was so loose and inefficient as to be incapable of natural development. As soon as he was able, he began to create in the royal domains better military, financial, police, and judicial systems. The old institutions having gained no strength in the mean while were unable to stand against the new and more effective ones, which gradually spread over the whole of France. The new ones, however, were not combined with the old, but substituted for them; and thus the power both of the vassals and of the estates was crushed by the royal supremacy. In fact, the political and social organization of the country became entirely unlike. Socially, the nation was still divided into the classes whose selfish antagonism had made possible the triumph of the crown. Politically, absolute power had become vested in the king, who ruled by means of a paid corps of officials without ties with the local communities, unrestrained by permanent statutes, and dependent solely on his pleasure. The French Revolution did not essentially change this state of things. It did not create a new organic political structure of the community, but merely transferred the royal power to the people, or rather to those particular interests among the people that were able to acquire ascendency for the moment, and these were no more inclined to place restraints on their own omnipo-

tence than the king had been before. While, therefore, private law was just and strong, public law was weak and unstable ; and as public law is the foundation of political society, Gneist regards France as the very negation of a commonwealth based upon law.

German history followed very much the same course during the Middle Ages, but at their close the central power was not strong enough to enforce obedience and consolidate the empire. Hence the supremacy of the crown developed at a still later time, after the centrifugal forces had grown so powerful that the principalities had become well-nigh independent. Then the princes overcame within their territories the resistance of the estates as the king had done in France. In Germany, however, and especially in Prussia, the bureaucracy was so ordered as to furnish a better protection to individual rights and a firmer maintenance of law. But this broke down with the spread of French ideas after 1848, when the antagonistic interests in the state, taking advantage of the parliamentary system, abused the administrative power and introduced a veritable party tyranny.

Gneist considered the subsidiary framework of the English institutions, and especially the justices of the peace, as the foundation of the legal character of the government, and hence of the success of the parliamentary system. But he did not realize that the keystone of the whole structure is the ultimate decision by the courts at Westminster of all questions of law that arise in the course of the administration. He did not see that the legal spirit pervading the system is the result of giving to public law the sacredness and inflexibility that pertains to private law, and that this end is reached by fusing the two together, and confiding them both in the last resort to the same courts. On the contrary, he believed that public and private law ought to be kept distinct, and he approved of the practice of placing the former in the hands of special administrative tribunals. The germs of such a system appeared for a moment in England when the Star Chamber began to act as a supreme administrative court ; but one cannot help feeling that if this procedure had become permanent, public law would have been much less rigidly interpreted than it was by the King's Bench, that the administration would have become more discretionary, and that the strict, rigorous, legal spirit of the system would have been lost.

It may be added that Gneist considered the English government at its highest perfection under George III. In his opinion, the reform bill of 1832, the extension of the franchise in 1867, and still more the recent changes in local government, have been a departure from historic principles, and have tended by disorganizing the state to bring about a strife of parties and reduce England to the condition of other nations.

CHAPTER II.

FRANCE: PARTIES.

For more than a hundred years it has been the habit to talk of government by the people, and the expression is, perhaps, more freely used to-day than ever before, yet a superficial glance at the history of democracy ought to be enough to convince us that in a great nation the people as a whole do not and cannot really govern. The fact is that we are ruled by parties, whose action is more or less modified, but never completely directed, by public opinion. Rousseau, indeed, shadowed forth a great truth, when he declared that no community could be capable of a general will — or as we should express it, of a true public opinion — where parties or sects prevailed;[1] and our own experience of popular government will quite justify us in saying that public opinion is always more or less warped by the existence of party ties. A study of the nature and development of parties is, therefore, the most important one that can occupy the student of political philosophy to-day. Among Anglo-Saxon peoples, who have had a far longer experience in self-government than most other races, there are usually two great parties which dispute for mastery in the

The influence of parties in popular government.

As a rule there are only two parties in Anglo-Saxon countries, but several elsewhere.

[1] *Contrat Social*, liv. ii. ch. iii.

state. But in the countries on the continent of Europe this is not usually true. We there find a number of parties or groups which are independent of each other to a greater or less extent, and form coalitions, sometimes of a most unnatural kind, to support or oppose the government of the hour. Now the existence of several distinct political groups has a decisive influence on the working of the parliamentary system. Let us consider this question a moment.

Under the parliamentary system there are normally only two parties.

When a country with a parliamentary form of government is divided into two hostile parties, the ministers who lead the majority of the popular chamber must of course belong all to one of those parties, or all to the other, and they are forced by circumstances to work in harmony. But even when party strife is less bitter, and parties have begun to break up, experience has proved that the best policy for the ministers is to support each other and stand or fall together. Lord Melbourne is reported to have exclaimed at a cabinet meeting, after a discussion on the question of changing the duty on corn, "Now is it to lower the price of corn, or is n't it? It is not much matter which we say, but mind, we must all say the same."[1] The statesmanship implied by this remark may not have been of the highest kind, but the politics were sound, and showed a knowledge of the great secret of success. It is, indeed, an axiom in politics that, except under very peculiar circumstances, coalition ministries are short-lived compared with homogeneous ones, whose members are in

[1] Bagehot, *English Constitution*, p. 16, note.

cordial sympathy with each other. Now so long as the ministers cling together, every member of the House must consider the cabinet and its policy as a whole, and make up his mind whether he will support it, or help to turn it out and put in an entirely different set of ministers with another policy. He cannot support the cabinet on certain questions and oppose it on others. He must sacrifice details to the general question. The result is that the members either group themselves about the ministers, and vote with them through thick and thin, or else they attach themselves to an opposition party, whose object is to turn out the cabinet, and then take office itself and carry on a different policy. The normal condition of the parliamentary system, therefore, among a people sufficiently free from prejudices to group themselves naturally, and possessing enough experience to know that the practical and attainable, and not the ideal, is the true aim in politics, is a division into two parties, each of which is ready to take office whenever the other loses its majority. This has been true in England in ordinary times, and although of late years it has been frequently asserted that the two great parties in the House of Commons are destined to come to an end, and be replaced by a number of independent groups, the prophecy does not accord with experience. It is based on the state of the Parliament of 1892, and seems to arise from mistaking a temporary political condition for a permanent one. The sudden interjection of the question of Home Rule into English politics caused a new party division on fresh lines, which necessarily broke up the traditional associ-

ations of public life, and threw both parties into a state of confusion that has not yet disappeared. On one side, the opponents of the measure were composed of men whose habits of thought had been most diverse; while the followers of Mr. Gladstone, on the other side, included many Liberals who were forced, against their will, to subordinate to Home Rule other matters which they deemed more important. In short, the introduction of a new issue shattered the old basis of cleavage, and it is not surprising that new, solidified parties were not formed in an instant. Moreover it may be noticed that although the Liberal groups in the late House of Commons talked freely of their dissensions, they acted as a single party, and supported the cabinet by their votes with astonishing fidelity.

It cannot work well otherwise.

A division into two parties is not only the normal result of the parliamentary system, but also an essential condition of its success. Suppose, for example, that a third party, like that of the Irish Home Rulers under Parnell, is formed, and places some one specific issue above all others, with the determination of voting against any cabinet that does not yield to its demands on that point; and suppose this body becomes large enough to hold the balance of power. If, in such a case, the two old parties do not make a coalition, or one of them does not absorb the new group by making concessions, no ministry will be able to secure a majority. Every cabinet will be overthrown as soon as it is formed, and parliamentary government will be an impossibility. Now suppose that the third party, instead of being implacably hostile to

both the others, is willing for a time to tolerate a cabinet from one of them, — is willing, in short, to allow the ministers to retain office provided they give no offense. Under these circumstances parliamentary government is not impossible, but it is extremely difficult. The ministers are compelled to ride two horses at once. They must try to conciliate two inharmonious bodies of men, on pain of defeat if either of them becomes hostile; and hence their tenure is unstable and their course necessarily timid. Now the larger the number of discordant groups that form the majority, the harder the task of pleasing them all, and the more feeble and unstable the position of the cabinet. Nor is the difficulty removed by giving portfolios to the members of the several groups; for even if this reduces the labor of satisfying the parties, it adds that of maintaining an accord among the ministers themselves, and entails the proverbial weakness of coalition governments. A cabinet which depends for its existence on the votes of the Chamber can pursue a consistent policy with firmness and effect only when it can rely for support on a compact and faithful majority; and therefore the parliamentary system will give the country a strong and efficient government only in case the majority consists of a single party. But this is not all. The opposition must also be united. So long as the ministry stands, the composition of the minority is, indeed, of little consequence; but when that minority becomes a majority, it must in turn be a single party, or the weakness of a coalition ministry cannot be avoided. It follows that a division of the Chamber into two parties, and two par-

ties only, is necessary in order that the parliamentary form of government should permanently produce good results.

This condition has not been fulfilled in France.

In France the parliamentary system has not worked well, because this condition has not been fulfilled.[1] The various groups of Monarchists and Bonapartists have together formed in the Chambers the party of the Reactionaries, or as it is more commonly called, the Right.[2] The rest of

[1] This is recognized by many French writers, *e. g.*, Lamy, *La République en 1883;* Paul Laffitte, *Le Suffrage Universel et la Régime Parlementaire*, pt. i. ch. iii.; Saleilles, in the *Annals of the American Academy of Political Science*, July, 1895, pp. 57, 64, 65. But the reason for the existence of a number of groups in France seems to be only partially understood. The most clear-sighted writer on this subject is Dupriez. (See *Les Ministres*, vol. ii. pp. 363–65, 370–71, and 386–95.)

[2] For readers unfamiliar with European politics it may perhaps be necessary to explain the meaning of the terms Right and Left, as they are used all over the Continent. In England a broad aisle runs from the Speaker's desk through the middle of the House of Commons to the main entrance opposite, and the benches of the members are arranged parallel to this aisle and facing it. The Ministry sit on the front bench at the right of the Speaker (the so-called Treasury Bench), their supporters taking seats behind and alongside of them, while the opposition sit on the left side of the House. The Liberals and Conservatives, therefore, are each to be found sometimes on one side of the House and sometimes on the other, according as their party is in power or not. But on the Continent the seats are arranged, as a rule, like those of a theatre, as in our legislative bodies, the ministers usually sitting immediately in front of the Speaker or President, on a bench which sometimes faces him and sometimes looks the other way, while the conservative members sit on the President's right, the more liberal next to these, and the radical on his left. As this arrangement is permanent, the words Right and Left have come to be generally used for Conservative and Liberal; and the different groups are often designated by their position in the Chamber, as the Right, the Centre, and the Left Centre, the Left, or the Extreme Left.

the members have been supporters of the Republic, and have formed nominally a single party, but they have really been held together only by a desire to maintain the existing form of government, and have seldom acted in concert except when they thought that threatened. They have always comprised men of every shade of opinion, from conservatives to radicals and even socialists, and would speedily have broken up into completely hostile parties, if it had not been for the fear of the Reactionaries. Even under the pressure of this fear their cohesion has been very slight, for they have been divided into a number of groups with organizations which, though never either complete or durable, have been quite separate; and again, these groups have often been subdivided into still smaller groups, whose members were loosely held together by similarity of opinions or desire for advancement, usually under the standard of some chief, who held, or hoped to win, a place in the cabinet. In fact, the parties in the Chamber of Deputies have presented such a series of dissolving views that it is very difficult to draw an intelligible picture of them.

History of parties under the Third Republic.

A short history of the parties under the Third Republic will help to make their nature and position clear.[1] In the National Assembly, elected at the close of the war with Germany, the Right, consisting of Monarchists and a few Bonapartists, had at first a majority, although the

[1] A list of the cabinets, with the causes of their fall, may be found in Muel, *Gouvernements, Ministères et Constitutions de la France*, and Haucour, *Gouvernements et Ministères de la IIIme République Française.*

subsequent course of events proved that it had no chance of carrying out its own opinions. The members openly in favor of a Republic were in the minority, and were, moreover, divided into three groups: the Extreme Left, with few seats in the Assembly, but many active and enthusiastic partisans outside; the Left proper, at first the largest of the three groups; and the Left Centre, which was not strong at the outset, but grew rapidly by the adhesion of many former Monarchists. A regular government of some kind had to be established at once, and the first act of the Assembly was to elect as Chief of the Executive,[1] by an almost unanimous vote, the former minister of Louis Philippe, Adolphe Thiers, whose personal inclinations were in favor of constitutional monarchy, but who saw that in the existing condition of things a Republic was the only form of government possible in France. Under these circumstances Thiers selected his ministers among the moderate elements in the Assembly, chiefly from the Left Centre, and although his views were by no means in entire accord with those of the Right, he was supported by the great majority of the Assembly until the treaty of peace had been made and the country almost entirely evacuated by the German troops. The intense dread of radicalism on the part of the Right, and the decided stand of the President in favor of the Republic, had already begun, however, to make a breach between them, and a conflict was soon precipitated. In

The presidency of Thiers, Feb., 1871–May, 1873.

[1] This title was changed on Aug. 31, 1871, to that of President of the French Republic.

the spring of 1873 a number of Radicals won seats at by-elections, and this was followed by the resignation of the most conservative of the ministers, and a partial reconstruction of the cabinet. Thiers himself was a strong Conservative, but he did not believe in the policy of active resistance to the Radicals urged by the Right, and hence the latter, on May 24, carried an order of the day censuring the recent changes in the ministry. Thiers at once resigned, and the Right elected Marshal MacMahon in his stead.

The presidency of MacMahon.

The remainder of the term of the National Assembly.

The new President appointed a cabinet of a more strictly conservative character, and placed at its head the Duc de Broglie, who had led the attack against Thiers. But this ministry also did not represent any united party, and, indeed, it would not have been possible for it to do so, because the parties had become so broken up that no single group controlled a majority of the Assembly. In fact, a year had hardly passed when the cabinet was defeated by the votes of the Extreme Right, the Left Centre, and the Left, on a question of the order in which the Constitutional Laws should be considered. Before those laws were completed two more ministries had come in, each a trifle more liberal in composition than the last, but neither of them able to command the allegiance of a compact majority.

The first years of the new constitution.

At last the constitution was adopted, and early in 1876 the first Senate and Chamber of Deputies were elected;[1] the former being still controlled by the Right, while in the latter

[1] The seventy-five life senators had been chosen in December, 1875.

the majority was Republican by more than two to one. The strength and character of the various Republican groups in the Chamber of Deputies was, however, very different from what it had been in the Assembly, for the Extreme Left, which had controlled only a few seats there, had grown very much in size, and took the name of "Republican Union" to distinguish it from a new group that had been formed still farther to the Left. Gambetta, indeed, the hero of the final struggle against Germany, and the leading spirit of the Union, had formerly passed for an extremist, but was now accused by the theoretical Radicals of adapting his policy to circumstances, and striving for what was attainable rather than for the ideal principles of the Republic. For this reason they styled him an "Opportunist," a name that was soon applied to the party of which he was the chief. During the period that now began, the most important of the Republican groups in the Chamber of Deputies were the Left Centre, the Republican Left, the Republican Union, the Radical Left, and the Extreme Left; and each of these, like the fractions into which the Right was split, was organized with a president, secretary, and executive committee of its own; although it is hardly necessary to remark that no one of them comprised by itself a majority of the members of the Chamber. In the Senate the Republicans were similarly divided into the Left Centre, the Republican Left, and the Republican Union.

President MacMahon, as the head of a parliamentary government, felt obliged to select his ministers from the Republican majority in the Chamber, and shortly

after the election he appointed a new cabinet drawn entirely from the Left Centre. This ministry was certainly homogeneous, but as its immediate followers in the Left Centre were a small fraction of the Deputies, it could not count on the support of a majority; and finding itself beaten by the Left in the Chamber and by the Right in the Senate, it resigned in less than a year. The cabinet was reconstructed on the same lines under Jules Simon, who might have stood a better chance had not MacMahon himself become alarmed at the spread of radical opinions. The President reproached his minister with lack of firmness about the proposed laws on the press, and on his resignation appointed a new cabinet, composed largely of Monarchists, with the Duc de Broglie at their head.

MacMahon's strife with the Republicans, and his fall.

This was clearly a violation of the parliamentary principle, and the members of the Republican groups at once joined in a protest, which was answered in June, 1877, by a dissolution of the Chamber. By his course the President had opened a wide gulf between the Monarchists and the Republicans. He had made it impossible for the men of moderate views in the two parties to unite, and had precipitated a struggle between the extreme elements in the state. The conflict was passionate on both sides, for the Republicans were firmly convinced that the President intended to restore the monarchy, and he on his part believed equally strongly that the success of his opponents meant the triumph of radicalism and the ruin of the country. Nor were any efforts spared to carry the elections. The cabinet replaced

most of the prefects, and many other officials, by its own friends, and brought to bear the immense power of the administration. The Marshal himself threw his personal influence into the scale, and the bishops helped him by ordering a supplication for a favorable vote. But in spite of every exertion, the elections in October resulted in a victory for the Republicans. MacMahon, however, was not yet willing to submit, and when the ministers resigned, he appointed others who were not in active politics and had no seats in Parliament. The Chamber, regarding this as an attempt to defeat the will of the nation, refused to enter into any relations with the cabinet, and at last the President found himself obliged to give way. In December he constructed a purely Republican ministry, most of whose members were taken from the Left Centre; but it was now impossible for him to keep the Moderates in power. He had brought about precisely the result he meant to avoid, for he had thrown the Republican party into the hands of its less conservative wing. Gambetta had been the leader in the late campaign. The victory had been his victory, and had made him for the moment almost omnipotent in the Chamber. The only obstacle in his way was presented by the Senate, and when the elections of January 5, 1879, gave a majority in that body also to the Republicans, they assumed a more aggressive tone. They began by demanding the removal of several Bonapartist generals; and Marshal MacMahon, who felt that such a policy would injure the army, and who could not bear to dismiss his old companions in arms, saw no course

open to him but resignation. He therefore withdrew from public life, and on January 30, 1879, was replaced by Grévy, a Republican of Gambetta's school.

The progress towards the Left.

After the fall of MacMahon, the Opportunists remained for many years the dominant fraction in the Republican party, but as they did not comprise a majority of the Chamber, the ministers were drawn from more than one group. The combinations were, of course, constantly changing, and as a matter of fact, the successive cabinets became less and less conservative, and yielded more and more to the demands of the Extreme Left. First the communists were pardoned, then religious teaching was abolished in the public schools, and this was followed by the forcible breaking up of the so-called unauthorized religious orders. Meanwhile a host of officials were discharged, and replaced by men of more advanced views; and finally even the law protecting judges from removal was suspended, in order, as it was said, to purify the bench from the enemies of the Republic. In short, the policy of the government was dictated more and more completely by the Radicals.[1] The reason for such a state of things is simple. A body of men that has the enthusiasm and energy of fanaticism always possesses a greater momentum than its mere numbers would give it,[2] and in France by far the most determined and energetic parties are the Clericals, or ardent supporters

[1] G. Channes, *Nos Fautes, passim;* Jules Simon, *Nos Hommes d'Etat*, ch. vii. sec. I.

[2] The Comte de Chaudordy keenly remarks: "Beaucoup d'audace, un peu de savoir-faire, et on parvient à gouverner la France." (*La France en 1889*, p. 75.)

of the church, on the Right, and the Radicals on the Left; the people of less extreme views not having the same passionate convictions.[1] The Radicals were, in fact, far more tenacious than the other Republicans. The latter preferred to sacrifice their opinions rather than precipitate any crisis which might endanger the Republic, and, believing that they could not resist the Right and secure the necessary majority in the Chamber without the help of the Radicals, tried to conciliate them.[2] The result was that the Radicals, through their influence in the cabinet, wielded great power, without feeling the restraint that comes from a sense of responsibility.[3]

During the struggle with MacMahon, the Republicans had been solidly united, but the danger had not passed very long before the Radicals began to show themselves independent. They soon became quite ready to upset any ministry that offended them, and in fact cabinet after cabinet was overthrown by the votes of the Right and the Extreme Left. Even Gambetta, who had striven to keep the Republicans together, did not escape this fate, in spite of his immense popularity both in the country and in the Parliament. He did not consent to form a ministry until November, 1881; and after holding office only two months and a half, he was forced to resign by the refusal of the Chamber to introduce the *scrutin de liste* for the election of deputies. He lived only till the

[1] Channes, Letter of Sept. 5, 1885.

[2] Cf. Channes, pp. 334–35.

[3] Cf. Pressensé, *La France, les Partis et les Elections*, p. 51.

end of the year, and his death deprived France of her only great popular leader. After his fall, politics followed the old course, and there passed across the stage a series of short-lived ministries, none of which lasted more than a year, except one formed by Ferry in February, 1883. Ferry had formerly been very active in suppressing the religious orders, but he now declared himself opposed to the Radicals; and in spite of their hostility and his own lack of popularity, he succeeded by his personal force and ability in so managing the deputies as to keep himself in office for more than two years. He was even able to secure the adoption of the *scrutin de liste* which had wrecked Gambetta. But his long tenure of power awoke jealousy and resentment, and when his expedition to Tonquin met with reverses, the Chamber turned against him. A credit he asked for was rejected by a vote of more than two to one, and he resigned, never to hold a portfolio again. His is not, indeed, the only case in which the Republic has discarded a politician because he was too strong.

The growth of personal politics.

About this time a change began to come over the condition of the parties.[1] Their discipline had never been strict, for although the various groups were in the habit of holding caucuses to decide upon their attitude in regard to questions pending in the Chambers, such determinations had not been absolutely binding, and the members of a group rarely voted as a unit. But of late years the lack of discipline had been increasing. Moreover, the groups themselves had been subdividing and mul-

[1] Cf. Dupriez, vol. ii. pp. 386–95.

tiplying until they ceased so thoroughly to represent intelligible principles that personal interest became the real basis of union. At the same time a feeling began to arise that the groups were responsible for the bad working of parliamentary government, and after the elections of 1885 many deputies refused to join any organization at all. The breaking up of the groups was followed, not by the formation of great parties, but by the growth of innumerable personal cliques whose political opinions were often ill-defined. The result was that the cabinets had no policy, and were drawn now a little more from the Left and now a little more from the Centre, according to the opportunity of making a workable combination. The deputies were naturally in a state of political anarchy, while the Chamber, without the guidance of responsible leaders, did not know its own mind. In March, 1888, it overthrew one set of ministers because they refused to consider the revision of the constitution, and within a year it upset the next because they wanted to consider it. Politics were truly in what a friend of the writer described as a condition of permanent instability. To how great an extent this is true may be judged from the fact that in the ten years following the resignation of President MacMahon there were fourteen different cabinets.[1]

Meanwhile, the most conservative class of Repub-

[1] It was during this period, on Dec. 2, 1887, that President Grévy was forced to resign on account of the scandal arising from his son-in-law Wilson's traffic in decorations. On the next day Carnot was elected in his stead.

licans, finding their opinions disregarded, had become discouraged, and abstained to a great extent from going to the polls.[1] Thus it happened that at the election of 1881 the Left Centre almost disappeared from the Chamber. But while the Parliament and the cabinets became continually more radical, the people at large were really getting more conservative.[2] The government failed, therefore, to represent the true sentiments of the country, which grew weary, moreover, of the incessant change of ministries, and of the intriguing and wrangling in the Chamber. It felt that the best men were not at the head of the state, and it conceived a profound disgust for parliamentary government, and a good deal of contempt for politicians,[3] — a feeling justified by the fact that one of the greatest merits of the parliamentary system, that of sifting the public men and bringing the greatest to the top, had certainly not been realized in France. The people showed their discontent at the general election of 1885 by returning an increased number of Monarchists; but the Republicans did not take warning, and pursued their old tactics. At this time General Boulanger came forward and promised reform. He had become prominent as Min-

The rise of General Boulanger.

[1] Simon, *Dieu, Patrie, Liberté*, pp. 330, 374; *Nos Hommes d'Etat*, p. 116; *Souviens-toi du Deux-Décembre*, pp. 90, 349, *et seq.*; Laffitte, *op. cit.*, p. 75.

[2] Channes, *Nos Fautes, passim*; Simon, *Souviens-toi*, p. 146.

[3] Channes, Letter of Aug. 22, 1885; Simon, *Dieu, Patrie, Liberté*, pp. 374–75; *Souviens-toi*, p. 140. For recent popular expressions of disgust for the parliamentary system and the intrigues of politicians, see, for example, the *Petit Journal*, Dec. 7, 1892, Feb. 18, 1893; *Le Figaro*, Dec. 22, 1892; *Le Matin*, Feb. 15, 1893.

ister of War from January, 1886, to May, 1887, when his heavy expenditures on the army, and his aggressive hostility towards Germany, had caused the fall of the last cabinet to which he belonged. Always classed as a Radical, he now proposed revision of the constitution, although precisely what that revision was to be he refused to say. The Bonapartists, who hoped for the overthrow of the Republic and cared little what the name of the next Emperor might be, trooped after him almost to a man. A considerable part of the Monarchists, also, were glad to fish in troubled waters, and followed him;[1] and he secured, besides, the support of a good many Radicals, because in spite of their success they were dissatisfied. They had failed to attain their ideal,[2] for the ideal of the extreme French Radicals is so far removed from actuality as to be unattainable, and hence they are never satisfied with anything that exists, their constant desire being for change, not to say destruction. For a moment the danger was great, and, indeed, had a war broken out, or had Boulanger himself been a man of real capacity, it is not impossible that the Republic might have been brought to an untimely end. But the Republicans who remained faithful realized the gravity of the crisis. They drew together, and Boulanger was heavily beaten at the general election of 1889.[3]

His fall.

[1] See the Comte de Chaudordy, *La France en 1889*, p. 73; Jules Simon, *Souviens-toi*, pp. 153–59; "The Stability of the French Republic," *Forum*, vol. 10, p. 383.

[2] Channes, Letter of Oct. 1, 1883.

[3] For a discussion of Boulanger's defeat and its effect on parties, see articles by G. Monod, *Contemp. Rev.*, vol. 58, p. 19, and vol. 60, p. 911.

The storm had passed, but it left a marked, perhaps a permanent, change in the political atmosphere of France. One of its most important effects was on the attitude of the Right. By following Boulanger, the Bonapartists and many of the Monarchists put themselves in a totally false position, and learned their own weakness and the vitality of the Republic. Their situation, indeed, had been none too strong before, because they never had anything in common but their hatred of the existing government, so that their triumph at any moment would have been a signal for their quarrel. Each of these two groups, moreover, had long been hopelessly divided within itself.[1] Their real bond of union, or perhaps it would be better to say their real basis of strength, was the Catholic church, of which they tried to be the support and the shield;[2] for it must be remembered that in France, church and state are not separated, the relations between the two still resting, so far as the Catholics are concerned, on the *Concordat* between Napoleon I. and the Pope. The bishops are nominated by the government, and the appointments to all the higher ecclesiastical offices require its approval. No papal bull can be published in France, nor can a Nuntio exercise any functions there without its consent; and the existence of most of the monastic and other religious communities is dependent upon its permission. On the other hand, the clergy receive their salaries

Its effect on the Right.

[1] Comte de Chaudordy, *La France en 1889*, p. 74.

[2] Cf. Channes, Letters of Sept. 17, 1883, and Oct. 27, 1884; G. Monod, "French Affairs," *Contemp. Rev.*, vol. 60, p. 911.

from the state.[1] Under these circumstances, it is inevitable that religious matters should be constantly prominent in politics, to say nothing of the question of the connection of the church with education, which has been a fruitful source of strife.[2] Gambetta early saw that the strength of the Reactionaries was based upon their alliance with the church, and sought to cut the ground from under their feet by breaking down the power of the priests. Hence his cry, "*Le cléricalism voilà l'ennemi*," and hence the series of measures directed at the influence of the clergy and even at religion.[3] In justification of his course, it must be said that the political activity of the French priesthood is commonly believed to prevent a free expression of public opinion, and that the church by its alliance with Napoleon III., and afterwards with MacMahon in 1877, took up a position of real hostility to the Republic.[4] But Gambetta did not realize the magnitude of the power

[1] See Lebon, *France as It Is*, ch. vi. The Protestant churches (Calvinist and Lutheran), the Jewish, and in Algiers the Mohammedan, are also supported by the state. In France, religion, strictly speaking, is not free, for except in the case of the forms of worship which are recognized and supported by the state, all meetings and associations for religious purposes are subject to the ordinary rules of law, by which no meeting can be held without giving the authorities notice twenty-four hours beforehand, and no association of more than twenty persons can be formed without a permission from the government which may be revoked at any time ; Lebon, *Ib.*, pp. 87, 127.

[2] See Lebon, *Ib.*, p. 142 *et seq.*

[3] For a description of some of these measures, see Simon, *Dieu, Patrie, Liberté.*

[4] See Vicomte d'Avenel, "La Réforme Administrative — Les Cultes," *Revue des Deux Mondes*, May 15, 1890, pp. 352–53 ; Channes, Letter of Oct. 27, 1884 ; Simon, *Dieu, Patrie, Liberté*, p. 193 *et seq.*

he attacked. He did not see that love and reverence for the church cannot be stamped out in France, and that any attempt at persecution only intensifies them.[1]

So long as the church was hostile to the Republic, the men who defended her were sure to have a considerable following; but the Boulanger episode led her to doubt the wisdom of allying herself with a discredited party against a powerful republic. In November, 1890, Cardinal Lavigerie, one of the most influential of the French prelates, declared that the church was not necessarily opposed to the republican form of government in France, and several of the other bishops immediately followed his example. In the spring of 1892 the Pope himself issued an encyclical letter to the same effect, — a policy which he had the courage and wisdom to reiterate in the midst of the Panama scandals, in the following winter, in spite of the discredit those scandals threw upon a number of leading Republican politicians, and incidentally upon the Republic itself. The change in the attitude of the church naturally shook a good deal the position of the Reactionaries, many of whom, under the name of *Ralliés*, now prepared to accept the Republic.[2] In fact, before Cardinal Lavigerie had spoken, party lines had become softened and blurred, and a group calling itself the Constitutional Right, with conservatism under the Republic as a programme, had already been formed, and had tried to ally itself

Change in the attitude of the church towards the Republic.

[1] On the unpopularity of the crusade against the church, see Channes, *Nos Fautes, passim.*

[2] G. Monod, "French Affairs," *Contemp. Rev.*, vol. 60, p. 911.

with the Moderate Republicans. Whether the Right will definitely abandon all hostility to the form of government or not depends very much on the action of the Republicans themselves. That every true Republican in France ought to wish to make the acceptance of the Republic as universal as possible would hardly seem to admit of a doubt, but to the Radicals such a prospect is by no means wholly agreeable. The chief weakness in the position of the Reactionaries has lain in the fact that they have stood for revolution, which France has learned to abhor;[1] and if they were to abandon all idea of changing the form of government, their strength would no doubt increase. Moreover, on the practical questions of the day, those Republicans who are by nature conservative are really closer to the Right than to the Radicals;[2] and although the men of conservative views have hitherto been unable to unite, because some of them were Republicans and some were not, and hence have failed to exert their full influence in politics, yet it is probable that together they form a decided majority of the people.[3] If, therefore, the Right, as a whole, were to accept the Republic without reserve, thereby freeing the Moderates from their dependence on the Radicals, the conservative elements in France would be likely to draw together and get control of the state.[4] Now, much as the Radicals are attached to the Republic, they have

[1] See an article on "Provincial France," *Quart. Rev.*, Oct., 1890.

[2] Cf. *Le Figaro*, Feb. 9, 1893.

[3] Channes, p. 335.

[4] Comte de Chaudordy, *La France en 1889*, p. 73; G. Monod, "French Affairs," *Contemp. Rev.*, vol. 58, p. 19.

no desire to have it conservative, or to see their own influence curtailed; and they cannot fail to perceive that their interests and opinions would suffer a severe check if the Right were to become Republican.[1] It is not unnatural, therefore, that they should have tried to keep the Right and the conservative Republicans apart, by urging the government into a renewal of the anti-clerical policy.[2]

Struggle with Boulanger produced the policy of Republican concentration.

Another result of the contest with Boulanger, though a less permanent one, was a closer union of all the Republicans, caused by the impending danger and the need of united action to which it gave rise. Thus was developed the policy of the Republican concentration, as it is called; that is, the attempt to hold all the varying shades of Republicans together as a single party. This had always been the practice of the Opportunists, but now it grew more systematic. The different organized groups dissolved, or became less prominent and less active;[3] but the happy family so created could not possibly live in peace very long. For a time, indeed, everything went smoothly. Neither the Right nor the Radicals were at first in a condition for battle, because the Right had been disorganized and beaten, and the Radicals had lost power by the defection of some of their members, and by the fact that the revision of the

[1] G. Monod, *Contemp. Rev.*, vol. 58, p. 19.

[2] "La pacification réligieuse," George Picot, *Revue des Deux Mondes*, July 1, 1892. This has always been the Radical device for keeping the Republicans together. Cf. Dupriez, vol. ii. p. 348; Simon, *Nos Hommes d'Etat*, p. 146.

[3] Dupriez, vol. ii. p. 392.

constitution, which had long been a cardinal point in their programme, had been discredited by Boulanger's adoption of it. Party strife was, therefore, thrown temporarily into the background by economic questions which divided the deputies on new lines; the protective tariff, for example, drawing its supporters from all parts of the Chamber. The result was that the colorless cabinet of Freycinet, formed in March, 1890, was able to prolong its existence more than two years. The views of the different Republican elements were, however, too far apart to allow them to work together in real harmony, and after the suicide of Boulanger had taken away the chief motive for union the old antagonism revived, and the efforts of the successive cabinets to treat the Republicans as a single party only concealed the differences they were unable to suppress. Such a policy could be assumed with success only by ministers of great personal force and influence, who could govern their followers and compel obedience; but as the French cabinets were not strong, their object was to avoid offending any of the groups of the Left, and their course was weak and vacillating. While the ministers were thus trying to keep the Republicans together,[1] the conservative and radical wings each strove to exclude the other from the control of the party, and force the adoption of its own views.[2] It was

[1] See Ribot's declaration of his policy on this point on Jan. 12, 1893, *Journal Officiel*, Jan. 13.

[2] See, for example, the debate in the Chamber on an interpellation on Feb. 16, 1893, *Le Matin*, Feb. 17, and the Report in the *Journal Officiel* of the same day. The Radicals, being weak, urged at this time the policy of concentration, which the Conservative Republicans did not want. See *Le Matin*, Feb. 9 and 12, 1893, and *Le Figaro*, Feb. 18.

clear, therefore, that the policy of the concentration was a failure,[1] and, indeed, it had so enfeebled the government, and deprived it of the power to follow any steady policy, that some of the Republicans proposed to restore the habit of holding caucuses of the groups, in order that these might discuss and settle all questions as they arose, and thus supply the lack of guidance on the part of the cabinet.[2]

Abandonment of that policy.

The elections of 1893 made a great change in the political situation, for in spite of the Panama scandals of the preceding winter, which the Right had tried to use as a means of discrediting the Republic, and the Radicals as a means of discrediting their more conservative allies, these last gained a large majority of seats. The people either did not believe the stories of wholesale corruption, or else thought all politicians equally bad. At all events they disappointed the hopes of the extremists. The Radicals and the Extreme Left gained, indeed, a few members, but several of their chiefs failed to be elected, and among them Clémenceau, who had upset more ministries than any other man in France. The Right, moreover, both in the part that accepted the Republic and in that which opposed it, lost so heavily in favor of the Conservative Republicans that the latter, who were henceforth known as the Moderates or Republicans of Government, had an absolute majority in the

[1] See *Le Temps*, Jan. 8; *Le Figaro*, Feb. 9, 1893; and a letter of the former date from M. Piou to *Le Figaro*. On the evils of the policy, see Lamy, *La République en 1893*; Pressensé, *Les Partis et les Elections*.

[2] *Le Matin*, Dec. 14, 1892.

Chamber.[1] At last it was plain that the policy of the concentration must be given up, and on December 3, shortly after the opening of the session, a ministry of Moderates was appointed with Casimir-Perier at its head. For the first time in the history of the Republic a homogeneous cabinet was supported by a homogeneous majority. The system of groups, however, was by no means abandoned, for besides the Republicans of Government, who formed a single body, the Republican part of the Chamber contained a number of factions, of which the most important were that of the Radicals, surnamed at this time the Progressive Left, and that of the Socialists, who organized under the name of the Extreme Left, but were divided into several subordinate groups.[2] The new cabinet pursued a thoroughly conservative policy, maintaining the authority of the government against socialistic agitation, and adopting a conciliatory tone towards the church; but in spite of the fact that a decided majority of the Chamber was heartily in sympathy with its general course, it was upset in May, 1894, by one of those unexpected crises that often occur in France. The ministers were suddenly asked in the Chamber whether they intended

The cabinet of Casimir-Perier.

Its fall.

[1] Daniel, *L'Année Politique* for 1893, p. 281, gives the results of the election as follows: —

Republicans of Government	311
Radicals	122
Right	58
Socialists	49
Ralliés	35

[2] Daniel, *L'Année Politique*, 1893, p. 331.

to allow the employees of the state roads to attend a national congress of railroad men; and when they replied in the negative a motion expressing disapproval was made. To the surprise of everybody it was carried, and the ministers resigned. The Radical and Socialist groups were elated, and each of them passed a resolution to the effect that the next cabinet ought to lean more to the Left. The Republicans of Government, on the other hand, voted that they would not support any ministry that did not adopt the same principles as Casimir-Perier,[1] and in fact it was evident that no other course could be pursued; but the former ministers having agreed to stand or fall together,[2] a cabinet of new men was appointed, who carried on the old policy.[3] The whole occurrence illustrates the irrational working of the parliamentary system in France.

The murder of Carnot.

A month later President Carnot was murdered by an anarchist at Lyons. Such a terrible event naturally strengthened the party that upheld the authority of the government; and the Conservatives had no difficulty in electing Casimir-Perier to the vacant post, and in passing a law concerning the offense of inciting to crime, which increased the penalty, took away the right of trial by jury, and forbade publication of the proceedings. The Extreme Left, however, was neither awed nor silenced. Not only did it continue to attack the cabinet, but it kept up in the newspapers a

[1] *L'Année Politique*, 1894, pp. 142, 143.

[2] Muel, *Gouv. Min. et Const. Supp.*, p. 73. Only one of the old ministers sat in the new cabinet.

[3] *L'Année Politique*, 1894, p. 145 *et seq.*

constant stream of personal abuse against the new President. With the Conservatives, moreover, the impulse to rally round the government was of such short duration, that in less than seven months the cabinet was overthrown. It happened in this way. A difference of opinion arose between the Minister of Public Works and certain railroad companies over the interpretation of a statute guaranteeing interest on the securities of the roads. The matter was brought before the Council of State, and when it decided against the government the minister threw up his position. His colleagues felt bound by the decision of the tribunal, but the Chamber censured their course and thus forced them to resign. The President suddenly announced that he should follow their example. He had passed seven unhappy months in office, a constant target for slander and insult, with a feeling that the cabinet did not support and protect him as it should, and he could bear it no longer. The provocation was no doubt great, but one cannot help thinking that if Dante had lived at the present day he would have placed Casimir-Perier with Celestine V., —

Resignation of Casimir-Perier.

"Che fece per viltate il gran refiuto."

Felix Faure, the new President, appointed another cabinet of Moderates, who followed nominally the old policy, but were really more compliant towards the Radicals than their predecessors had been. They passed an amnesty for political offenses, and imposed a tax on the religious orders; and in fact the rigidly conservative principles adopted

The breaking up of the majority.

by the ministry of Casimir-Perier had been maintained with less and less firmness ever since its fall in May, 1894. Meanwhile, under the lack of parliamentary discipline, the majority in the Chamber was slowly going to pieces. Instead of being a compact party that could be relied upon, it became a feebler and feebler support, until at the meeting of the Chambers in the autumn of 1895 it had ceased to be a real majority at all. The cabinet had a heavy burden to carry, and would probably not have survived a debate on the expedition to Madagascar, for although the campaign against the Hovas had ended in victory, some serious mismanagement had no doubt taken place. The final struggle turned, however, on the chronic charge of corruption. There had been bribery in connection with one of the railroads, and the ministers, while known to be perfectly innocent themselves, were accused of trying to shield guilty politicians. They refused to interfere with the inquest of the magistrates, which in France is considered the province of the courts, but the Chamber, on October 28, voted by a large majority that all the persons implicated ought to be brought to trial and the documents laid on the table of the House. The ministers, regarding this as a censure, resigned; and so impotent had the Moderates become, that a Radical cabinet was formed, and declared its intention of pursuing a truly Radical policy. Thus the Chamber, which, for the first time in the history of the Republic, had begun its career with a homogeneous ministry supported by a homogeneous majority, had degenerated in two years into a state of political confusion, and found itself

led by a homogeneous cabinet of an entirely different party.

Bourgeois' Radical cabinet.

An English premier placed in the position of Bourgeois, the head of the new ministry, would have insisted on a dissolution, and refused to accept office on any other terms; but the condition of the French Chamber is so fluid, and the subdivision into groups gives such an opportunity for political combinations, that he was able to accept office with the existing Parliament. Out of the unpropitious elements of the Chamber he contrived by dexterity and determination to manufacture for himself a tolerably efficient majority. The use of patronage doubtless procured some adherents, while a vigorous pursuit of the charges of corruption brought over to his side a certain number of men who were afraid of the suspicion of trying to smother investigation. After consolidating his followers, he brought forward, to the delight of the Radicals, a proposal for a progressive income tax. It is probable that far more than half of the deputies disliked the measure, and the committee on the budget was decidedly hostile to it; but the influence of the cabinet had become so great that, on March 26, 1896, the Chamber adopted an order of the day approving the general principle involved. The order, it is true, was only carried by sixteen votes, and left undecided some of the most important points in dispute, but the fact that Bourgeois was able to maintain himself at all, and to wring a sanction of a Radical policy from a Chamber composed chiefly of men elected as Conservatives, shows how little the French groups furnish a basis for a true party life.

The Conservatives looked upon the proposed income tax as an exceedingly dangerous measure, and were determined to exhaust every means in their power to prevent its enactment. It was quite probable that when it came to an actual vote the Chamber would not pass the bill, but the Conservatives preferred not to run the risk. They controlled the Senate, and made up their minds to use that body as a lever to pry the cabinet out of office. Twice the Senate passed a vote of want of confidence in the ministry, and twice the ministers refused to consider this a ground for resignation, declaring that they would remain so long as they had the support of the Chamber. A mere expression of opinion being ineffectual, the Senate adopted, on April 21, a proposal to refuse the credits demanded for Madagascar until a change of ministry took place, thereby proclaiming that it was ready to stop the wheels of government rather than tolerate the cabinet. Bourgeois was thus put in a position in which he could only remain in power at the cost of a prolonged struggle between the two Chambers, with a strong chance of losing at any time his majority in the Chamber of Deputies. Under these circumstances he thought it better to withdraw.[1]

It is overthrown by the Senate.

His successor, Méline, professed a desire to return to the policy of concentration, and tried to induce some of the Radicals to come into his cabinet on the basis of eliminating all questions that divided the Republicans. As this meant in

The Conservative ministry of Méline.

[1] For a description of the struggle between the cabinet and the Senate, see p. 23, note 1, *supra*.

reality a surrender of their programme, the Radicals not unnaturally declined. Méline, therefore, selected his colleagues entirely from the Conservatives, and in the statement of his policy read before the Chamber of Deputies on April 30, the income tax was definitely abandoned.

Here was a most excellent chance for the majority in the Chamber to show how much it was in earnest in supporting Bourgeois, and how much it cared for the Radical programme. On the very day of his fall, and after his resignation had been announced, the Radicals had succeeded in carrying the resolutions they proposed, in spite of the opposition of the Conservatives; but when Méline read his declaration of policy two days later, the Chamber adopted an order of the day expressing its approval by a majority of forty-three, so weak was party discipline, or rather so weak was the tie that bound the various groups together.

The policy of Republican concentration has been replaced by the practice of selecting the ministers only from one wing of the Republican party, but the Chamber has shown itself incapable of furnishing a stable majority for either wing.

During the last three years there has indeed been a nearer approach to a division of the deputies into two great parties — one Conservative and the other Radical — than at any other time since the birth of the Republic; and yet the history of the successive ministries during the life of the present Chamber makes it clear with how little sharpness the lines are drawn, and how little the members of the various groups that

compose the majority can be relied upon to be faithful to the cabinet. In short, there has been an approach to the system of two parties, but as yet not a very near approach, and the numerous detached groups still remain the basis of parliamentary life.

So much for the actual state of parties in France. Let us now consider the reasons for the subdivisions of the Chamber into a number of groups. And first we must look at a source of political dissensions with which we are not familiar at home, but which is to be found in almost every nation in Europe.

Causes of the existence of many parties in France.

Few persons ever ask themselves why the bodies of men who assemble every year at the State House or the Capitol have power to make laws. It is not because they have more personal force or wisdom or virtue than any one else. A congress of scientific men may contain all these qualities in greater abundance, but it cannot change a single line in the statute-book. Is it because they represent the people? But we all know that they occasionally pass laws which the people do not want, and yet we obey those laws without hesitation. Moreover, this answer only pushes the question one step further back, for why should we obey the people? A few centuries ago nobody recognized any right on the part of the people to govern or misgovern themselves as they chose, or rather on the part of the majority to impose their will on the minority; and in many countries of the world no such right is recognized to-day. How does it happen that there is not a class of men among us who

The lack of a political consensus.

think that the legislature does not fairly represent the people, or who think that the right to vote ought to be limited by a certain educational or property qualification, or by the profession of a certain creed; and why does not some such class of men get up a rival legislature? The fact is that, while we may differ in regard to the ideal form of government, we are all of one mind on the question of what government is entitled to our actual allegiance, and we are all determined to yield to that government our obedience and support. In short, a common understanding or consensus in regard to the basis and form of the government is so universal here that we feel as if it were natural and inevitable; but in all countries this is not so. Such a consensus is the foundation of all political authority, of all law and order; and it is easy to see that if it were seriously questioned, the position of the government would be shaken, that if it were destroyed, the country would be plunged into a state of anarchy. Now persons who do not accept the consensus on which the political authority of the day is based are termed in France Irreconcilables. Men of this sort do not admit the rightfulness of the existing government, and although they may submit to it for the moment, their object is to effect a revolution by peaceful if not by violent means. Hence their position is essentially different from that of all other parties, for these aim only at directing the policy of the government within constitutional limits, and can be intrusted with power without danger to the fundamental institutions of the nation, while the Irreconcilables, on the contrary, would use

their power to upset those institutions, and therefore cannot be suffered to get control of the state. They form an opposition that is incapable of taking office, and so present a disturbing element, which in a parliamentary form of government throws the whole system out of gear.[1]

A consensus cannot be created rapidly.

Another thing to be noticed about a consensus is that it cannot be created artificially, but must be the result of a slow growth and long traditions. Its essence lies in the fact that it is unconscious. The people of the United States, for example, could not, by agreement, give to a dictator the power the Czar wields in Russia, for except in the presence of imminent danger he would have no authority unless the people believed in his inherent right to rule, and the people cannot make themselves believe in any such right simply by agreeing to do so. The foundation of government is faith, not reason, and the faith of a people is not vital unless they have been born with it.[2] Now,

The French Revolution destroyed every political consensus.

[1] It is impossible to draw a sharp line between what is revolutionary and what is not; or to define exactly an Irreconcilable. The matter depends in fact upon the opinion of the community. Thus, before 1886, Home Rule might fairly be said to have been revolutionary, and the Irish Home Rulers to have been Irreconcilables; but after Mr. Gladstone made Home Rule a practical question in English politics, it would have been absurd to call Parnell's followers Irreconcilables.

[2] Curiously enough an exception to this principle, and almost a solitary one, is to be found in the history of the United States. The generation that framed the Constitution looked upon that document as very imperfect, but they clung to it tenaciously as the only defense against national dismemberment, and in order to make it popular, they praised it beyond their own belief in its merits. This effort to force themselves to admire the Constitution was marvelously successful, and resulted, in the

in France, the Revolution of 1789 destroyed all faith in the political institutions of the past, and was unable to substitute anything else. It did, indeed, give birth to a code of law, and to an administrative system, both of which have taken a strong hold on the nation, and have survived every change in the government. These are the permanent elements in France, and the only ones that have acquired the blind force of tradition. They supply a machinery that is unshaken by political upheavals, and it is this that has made it possible for the country to pass through so many revolutions without falling into a state of anarchy.[1] But in regard to institutions of a purely political character, the nation has not been so fortunate, for the governments that followed the Revolution were not sufficiently durable to lay even a foundation for a general consensus, and the lack of continuity has so thoroughly prevented the steady growth of opinion that the people have not succeeded in acquiring a political creed. The result is that every form of government that has existed in France has its partisans, who are irreconcilable under every other; while the great mass of the middle classes and the peasants have no strong political convictions, and are ready to support any government that maintains order. Thus the two Empires bequeathed to the Republic the group of Bonapartists, while the Monarchists are a legacy from the old régime and the reign of Louis Philippe. At pres-

The effect of this on parties.

next generation, in a worship of the Constitution, of which its framers never dreamed.

[1] Cf. Laffitte, pp. 208, 209.

ent it seems altogether probable that, if no great European crisis occurs, the Right will end by accepting the Republic, and if so the irreconcilable elements will disappear or become insignificant, and one of the chief obstacles to the formation of two great parties, one Conservative and the other Radical, will be removed.

Other causes of the subdivision of parties.

But this is only one of several obstacles, and the others are so great that it will probably be a long time before the system of groups breaks down in France, or is replaced by that of two political parties.

Theoretical character of French political opinions.

In the first place, the Frenchman is theoretical rather than practical in politics. He is inclined to pursue an ideal, striving to realize his conception of a perfect form of society, and is reluctant to give up any part of it for the sake of attaining so much as lies within his reach. Such a tendency naturally gives rise to a number of groups, each with a separate ideal, and each unwilling to make the sacrifice that is necessary for a fusion into a great party. In short, the intensity of political sentiment prevents the development of real political issues. To the Frenchman, public questions have an absolute rather than a relative or practical bearing, and therefore he cares more for principles and opinions than for facts. This tendency is shown in the programmes of the candidates, which are apt to be philosophic documents instead of statements of concrete policy, and, although published at great length, often give a comparatively small idea of the position of the author on

the immediate questions of the day.[1] It is shown also in the newspapers, and the use that is made of them. An Anglo-Saxon reads the newspapers chiefly for information about current events, and as all the papers contain very much the same news, he habitually reads only one. But the French papers contain far less news, and as the Frenchman reads them largely for the sake of the editorials, he commonly reads several in order to compare the opinions they express.

The French do not organize readily in politics.

It is partly on account of this mental attitude, and partly owing to the absence of the habit of self-government, and the lack of sympathy between different parts of the country, that the French do not organize readily in politics. This is the more curious because in military matters they organize more easily than any other people in the world; and it is no doubt the military instinct, as well as the want of confidence in their own power of political organization, that disposes them to seek a leader and follow him blindly after he has won their confi-

[1] Lebon, *France as It Is*, p. 85.

Abstracts of all the electoral programmes issued by the successful candidates for the Chamber of Deputies at the elections of 1889 and 1893, together with the results of the ballots, have been published by Duguet, under the title *Les Députés et les Cahiers Electoraux*. These volumes are very instructive; and a perusal of them shows that the programmes of the Radicals are much longer and less vague than the others, but often demand measures which lie out of the domain of practical politics, such as revision of the Constitution, abolition of the Senate, abolition of state aid to the churches, confiscation of all ecclesiastical property, elective judiciary, etc. The programmes give a very good idea of the candidate's general turn of mind; and those of the Radicals may be said to contain their conception of the ideal state of politics or of society. The Radicals are, indeed, the only group among

dence.[1] The inability to organize readily in politics has this striking result, that vehement as some of the groups are, and passionate as is their attachment to their creeds, they make little effort to realize their aims, by associating together their supporters in all parts of the country for concerted action. In fact, there may be said to be no national party organizations in France.[2] The various groups into which the deputies are divided have, as a rule, no existence whatever outside of Parliament, the candidates for seats merely calling themselves in general terms, Moderates, Radicals, Socialists, or simply Republicans without further qualification, and attaching themselves to a particular group after the Chamber has met. Moreover, the programmes, which are drawn up by each candidate for himself, are only individual confessions of faith, and are all different, so that there is no policy which any party as a whole is pledged to support. Before the opening of the campaign, indeed, party gatherings or banquets take place, and speeches are made, but at the last general election, for example, no common platform of principles was issued except by the Socialists.[3] It is after the campaign has begun, however, that the absence of party organization is most clearly seen. Then the struggle

the Republicans that can be said to have anything like a positive programme, and this is the source both of their strength and their weakness.

[1] Cf. Channes, Letter of Aug. 22, 1885.

[2] Cf. Lebon, *France as It Is*, p. 75; Theodore Stanton in the *North American Rev.*, vol. 155, p. 471. This contrasts strangely with the United States, where the machinery of a party has sometimes shown more vitality than its principles.

[3] Daniel, *L'Année Politique*, 1893, pp. 254–80.

is conducted in each electoral district with very little regard to the rest of the country, and in fact each district appears like a separate nation engaged in a distinct contest of its own.[1] Political effort becomes localized, and except for the candidates themselves, who confine their labors to their constituencies, scarcely a man of prominence opens his mouth.[2]

Effect of the French political mechanism in splitting up the parties.

One might suppose that, under a parliamentary form of government, party organization would hardly be required, and that, as in England, the need of political cohesion would be to a great extent supplied by a strong ministry that really led Parliament and the nation. But here we meet with some of the other causes that tend to produce a multiplicity of groups, — causes that spring from certain of the minor French institutions which were referred to in the beginning of the first chapter as inconsistent with the parliamentary system. Three of these are especially important, — the method of electing deputies, the system of committees in the Chambers, and the practice of interpellations.

The method of electing deputies.

In France the *scrutin de liste*, or the election of all the deputies from a department on one ticket, and the *scrutin d'arrondissement*, or the use of single electoral districts, have prevailed alternately, the latter being in force at the present day. But under both systems an absolute majority of all the votes cast is required for election. If there are more than two candidates in the field, and no one of them

[1] Comte de Chaudordy, *La France en 1889*, p. 89.

[2] Theodore Stanton, *North Am. Rev.*, vol. 155, p. 473.

gets such a majority, a second vote, called the *ballotage*, is taken two weeks later, and at this a plurality is enough to elect.[1] Now it is clear that such a procedure encourages each political group to nominate a separate candidate for the first ballot. Suppose, for example, that there are Reactionary and Moderate Republican candidates in the field, and that the Radicals prefer the Republican to the Reactionary, still they have nothing to lose by running a candidate of their own on the first ballot, for if the Reactionary can poll more votes than both his rivals combined, he will be elected in any event; if he cannot, he will not be elected whether the Radicals put up a candidate of their own or not. In this last case, the first ballot will have counted for nothing, and the Radicals will be able to vote for the Moderate Republican at the *ballotage*, and elect him then. They are likely, indeed, to gain a positive advantage by nominating a separate candidate, for if they succeed in polling a large vote on the first ballot, they are in an excellent position to wring concessions from the Moderates as a price of their support.

[1] Law of June 16, 1885, Art. 5. (This article was not repealed by the Law of Feb. 13, 1889.) By the same article a quarter as many votes as there are voters registered is required for election on the first ballot.

According to strict parliamentary usage, the term *ballotage* is applied only to cases where, at the final trial, the voting is confined by law to the two names highest on the poll at the preceding ballot, but the word is popularly used for any final ballot where a plurality is decisive.

For the choice of a senator by the electoral college of a department, the votes of a quarter of the college, and a majority of all the votes actually cast, are required on the first two ballots, while on the third a plurality is enough. Law of August 2, 1875, Art. 15. The election of delegates to the college by the municipal councils is conducted in the same manner. Law of Dec. 9, 1884, Art. 8.

Cumbrous as it is, this system of voting dates back to the election of the States General in 1789, and, with a couple of short breaks, has been maintained in France ever since.[1] The idea that a representative ought to be the choice of a majority of the people seems, indeed, to be natural in democracies, for we find it put in practice elsewhere. Thus, in the United States, a majority vote was formerly very commonly required for election, but it is instructive to notice that it was found to hinder the smooth working of two political parties, and has been generally though not quite universally abandoned.[2] The fact that election by majority did not give rise to a multiplicity of parties in America shows that by itself it does not produce that result, where the other influences favor the development of two parties; but it is nevertheless clear that where a number of groups exist, it tends to foster them, and prevent their fusing into larger bodies.[3] The French system has been praised on the ground that it saves the people from the yoke of huge party machines, and

[1] Poudra et Pierre, liv. ii. ch. vii.

[2] Stimson, Am. Statute Law, § 232. In Massachusetts, election by plurality was introduced in 1855. Const. of Mass., Amendments, Art. xiv. For the previous law, see Const. pt. ii. ch. i. sec. II. Art. iv.; ch. ii. sec. I. Art. iii.; sec. II. Art. i.; Rev. Stats. ch. iv. sec. XIII.

[3] At the elections of 1885, which were held under the system of *scrutin de liste*, there were two Republican lists of candidates in almost all the departments. G. Channes, Letter of Oct. 30, 1885. At the elections of 1889 and 1893, held under the *scrutin d'arrondissement*, there were two Republican candidates in a large proportion of the districts, the total number of candidates for a single seat running as high as ten. Duguet, *Les Députés et les Cahiers Electoraux en 1889; Id.*, 1893. And see *Tableau des Elections à la Chambre des Députés, dressé aux Archives de la Chambre.*

enables them to select their candidates more freely.[1] This is true, and it is a great advantage. But the converse is also true; the system tends to prevent the formation of great consolidated parties, and that is the evil from which parliamentary government suffers in France to-day.[2]

The system of committees in the Chambers.

The system of committees in the Chambers is a still more important matter. Each of the French chambers is divided into sections called *Bureaux*, of which there are nine in the Senate and eleven in the Chamber of Deputies.[3] The Bureaux are of equal size, and every member of the Chamber belongs to one and only one of them, the division being made afresh every month by lot. This is a very old institution in France, a relic of a time before parliamentary government had been thought of; for not only do we find it in the Assembly of Notables and the States General that met on the eve of the Revolution,[4] but it

[1] Alfred Naquet, "The French Electoral System," in the *North Am. Rev.*, vol. 155, pp. 467–68.

[2] It is not a little curious that just at this time, when the English system of two parties is thought by many people to be in danger of breaking up, a motion should be made in the House of Commons to introduce election by majority vote and second ballot. Such a motion was made by Mr. Dalziel on April 5, 1895.

[3] For the constitution of the Bureaux and the election of the committees, see Poudra et Pierre, liv. v. chs. ii. and iii.; Reginald Dickinson, *Summary of the Constitution and Procedure of Foreign Parliaments*, 2d ed. pp. 363–66.

These Bureaux must not be confounded with the Bureau of the Chamber, which consists of the President, the Vice-Presidents, and the Secretaries. The habit in France of using the same word with different meanings is liable to be the source of no little confusion to the students of her institutions.

[4] Poudra et Pierre, § 976.

existed in the ecclesiastical assemblies, and to some extent in the States General, at a much earlier date.[1] The use of the lot is, indeed, a survival from the Middle Ages, when it was a common method of selecting officials.[2] The Bureaux meet separately and have three functions. The first is that of making a preliminary examination of the credentials of members of the Chamber, which are divided among them for the purpose. The second is that of holding a preliminary discussion on bills brought into the Chamber, before they are referred to a committee; but as a matter of fact this discussion is perfunctory, and is limited to finding out in a general way what members of the Bureau favor or oppose the bill.[3] The third and most important function of the Bureaux is the election of committees, for with rare exceptions all the committees of both Chambers are selected in the same way. Each of the Bureaux chooses one of its own members, and the persons so elected together constitute the committee. In the case of the more important committees it is sometimes desirable to have a larger number of members, and if so the Bureaux choose in like manner two or even three members apiece, — the Chamber in each case

[1] Sciout, *Histoire de la Constitution Civile du Clergé*, p. 36. While writing, a friend has pointed out to me that the States General which met at Tours in 1484 was divided into six sections by provinces. See a journal of this body by Jehan Masselin, in the *Collection de Documents inédits sur l'Histoire de France publiés par ordre du Roi*, Paris, 1835, pp. 66–73.

[2] The chief relic of the lot left in Anglo-Saxon institutions is, of course, its use in the selection of the jury, — a survival which is due to the fact already pointed out, that the English royal justice developed at an early period.

[3] Dupriez, vol. ii. p. 404.

directing, by its rules or by special vote, the number of members to be elected. Thus the committee on the budget, which is the most important one of the year, consists of three members chosen by each of the Bureaux in the Chamber of Deputies, and contains, therefore, thirty-three members; while the corresponding committee in the Senate contains eighteen members, or two from each Bureau.

The committee on the budget and the one appointed to audit the accounts of the government are permanent, and remain unchanged for a year. A few of the others (those on local affairs, on petitions, on leave of absence, and on granting permission to members of parliament to introduce bills) serve for a month and then are chosen afresh. With these exceptions every measure is in theory referred to a special committee elected by the Bureaux for the purpose; but as there are certain to be in every session a number of bills that cover very much the same ground, a rigid application of this principle would result in inconsistent reports on the same matter by different committees, and would throw the work of the Chamber into utter confusion. A practice has, therefore, grown up of treating certain committees — such as those on the army, on labor, and on railroads — as virtually permanent, and referring to them all bills on their respective subjects.[1]

We have seen that with rare exceptions all committees, whether permanent, temporary, or special, are elected by the Bureaux, but these last, being created anew every month, acquire no corporate feeling, and hence have

[1] Dupriez, vol. ii. pp. 385–86.

no real leaders. Owing partly to this fact they do not choose freely, and the chief of the parliamentary groups meet and barter away the places on the important committees, which are thus cut and dried beforehand.[1] But whether the choice of committee-men is really made by the Bureaux or dictated by the chiefs of the groups, the main point to notice is that the system is entirely inconsistent with the parliamentary form of government. The cabinet cannot exert the same influence over an election conducted in this way that it could over one made by the Chamber in open session. In the latter case it might insist on the choice of a majority of the committee from among its own friends, and make of the matter a cabinet question; but it cannot treat the failure of several irresponsible sections of the Chamber to act in accordance with its wishes as an expression of want of confidence by the Chamber as a whole. The result is that the committees are not nominated by the cabinet, or necessarily in sympathy with it; and yet all measures, including those proposed by the government, are referred to them to revise as they think best. Now if the ministers are to be responsible for directing the work of the Chamber, they ought to have a policy of their own and stand or fall on that. They ought to be at liberty to determine their own course of action, and to present their measures to Parliament in a form that they entirely approve. But if a committee has power to amend government bills, the ministers must either assume the burden of trying to persuade the Chamber to reverse the amendments, with all the influence of the

[1] Cf. Simon, *Nos Hommes d'Etat*, pp. 41, 241.

committee against them; or they must take the risk of opposing the bill as reported, although they still approve of many of its features; or finally they must accept the bill as it stands, and become responsible for a measure with which they are not themselves fully satisfied. The committees in fact use their power without shrinking, and the annual budget, for example, has been compared to a tennis-ball sent backward and forward between the minister and the committee until a compromise can be reached.[1]

M. Dupriez, in his excellent work on the ministers in the principal countries of Europe and America, paints in very strong colors the evils of the French committee system. He points out how little influence the ministers have with the committees, who often regard them almost as the representatives of a hostile power in the state.[2] He shows that while the ministers have no right to be present at committee meetings, and are invited to attend only when they wish to express their views, the committees claim a right to examine the administrative offices, insist on seeing books and papers, and volunteer advice.[3] So little respect, indeed, do the committees pay to the opinions of the cabinet, and so freely do they amend its bills, that, as M. Dupriez sarcastically remarks, the government and the committee are never in perfect accord except when the former submits to the latter.[4] He says, moreover, that when a bill comes up for

[1] Simon, *Souviens toi du Deux Décembre*, p. 314.
[2] Vol. ii. pp. 406–7.
[3] *Id.*, pp. 395, 405, 423–24, 438–39.
[4] *Id.*, pp. 405–6, 412.

debate the reporter of the committee is a rival who has great influence with the Chamber, while the deputies are inclined to regard the ministers with jealousy and defiance.[1] Nor do the woes of the cabinet end here, for its authority is reduced to so low a point that its bills are quite freely amended during the debate on the motion of individual deputies.[2]

Of all the committees, the most domineering and vexatious is that on the budget. This committee seems to take pride in criticising the estimates and making them over, both as regards income and expenditures, while each member exerts himself to add appropriations for the benefit of his own constituents, so that when the report is finally made the government can hardly recognize its own work.[3] In strong contrast with all this is Dupriez's description of the procedure on the budget in England.[4] There the authority of the ministers is expressly protected by a standing order of the House of Commons to the effect that no petition or motion for the expenditure of the public revenue shall be entertained except on the recommendation of the Crown; and in accordance with a firmly established practice proposals for national taxes originate only with the government. In regard to amendments of the budget, members of the House may move to diminish, but not to increase an appropriation, and as a matter of fact the budget is rarely amended by the House at all. The comparison of the English and French methods of dealing with the budget goes far to explain the differ-

[1] Dupriez, vol. ii., p. 411.
[2] *Id.*, p. 412.
[3] *Id.*, pp. 425–26.
[4] *Id.*, vol. i. pp. 110–12.

ence in the position of the two cabinets. Such a state of things as exists in France cannot fail to lessen the authority and dignity of the ministers, and place them at the mercy of the committees. It prevents them from framing their own programme, and insisting that the deputies shall accept or reject it as it stands; and thus, instead of compelling the majority to act solidly together under the leadership of the cabinet, it allows any deputy to use his place on a committee as a means of urging his own personal views. Hence it tends to dislocate the majority and break it into sections, with policies more or less out of harmony with each other. While, therefore, the French scheme of committees has good points, and some features that might be very valuable under another form of government, it is clearly incompatible with the parliamentary system.[1]

Interpellations.

The habit of addressing interpellations to the ministers has a direct bearing on the stability of the cabinet and the subdivision of parties; for it cannot be repeated too often that these things are inseparable. The existence of the ministry depends on the support of the majority, and if that is compact and harmonious, the ministry will be strong and durable; if not, it will be feeble and short-lived. The converse is also true. The cohesive force that unites the majority is loyalty to the cabinet and submission to its guidance, but if the cabinets are weak, or are constantly overthrown at short intervals, they cannot

[1] Lebon, *L'Allemagne*, p. 88, remarks that the Bureaux in the French Chamber were intended to subdivide the factions, and accomplish this only too well.

acquire the authority that is necessary to lead the majority and weld it into a single party. This is especially the case when the crises occur over matters which are not of vital consequence to the bulk of the followers of the government, and yet that is precisely the state of things that interpellations tend to create.

It is of the essence of parliamentary government that the majority should support the ministers so long, and only so long, as it approves of their course, and this means their course as a whole, in administration as well as in legislation; for parliament, having the fate of the ministers in its hands, holds them responsible for all their acts, and has gradually extended its supervision over the whole field of government. Now a parliament can judge of the legislative policy of the cabinet by the bills it introduces, but it is not so easy to get the information necessary for a sound opinion on the efficiency of the administration. It is largely to satisfy this need that a practice has grown up in the House of Commons of asking the ministers questions, which may relate to any conceivable subject, and afford a means of putting the cabinet through a very searching examination. Of course the privilege is freely used to harass the government, but the answer is not followed by a general debate, or by a vote, except in the unusual case where a motion to adjourn is made for the purpose of bringing the matter under discussion.[1]

[1] The motion to adjourn is the only one that is in order, and since 1882 its use has been carefully limited. May, *Parl. Practice*, 10th ed. p. 240 *et seq.* In this form or some other a vote is occasionally taken on a single detail of administration. The most famous instances of late years have been the affair of Miss Cass in 1887, where the House of

A similar practice has been adopted in France, and questions are addressed to the ministers by members who really want information. But another kind of question has also developed, which is used not to get information, but to call the cabinet to account, and force the Chamber to pass judgment upon its conduct. This is the interpellation.[1] In form it is similar to the question, but the procedure in the two cases is quite different. A question can be addressed to a minister only with his consent, whereas the interpellation is a matter of right, which any deputy may exercise, without regard to the wishes of the cabinet. The time, moreover, when it shall be made is fixed by the Chamber itself, and except in matters relating to foreign affairs, the date cannot be set more than a month ahead. But by far the most important difference consists in the fact that the author of the question can alone reply to the minister, no further discussion being permitted, and no motion being in order; while the interpellation is followed both by a general debate and by motions. These are in the form of motions to

Commons expressed its disapproval of the government's refusal to make an inquiry by voting to adjourn, but where no member of the cabinet felt obliged to resign; and the recent defeat of Lord Rosebery's ministry. In the last case a motion was made to reduce the salary of the Secretary of State for War, in order to draw attention to the lack of a sufficient supply of ammunition, and the motion was carried; but there can be no doubt that the cabinet would not have resigned if its position had not already been hopeless.

In the House of Lords questions can always be debated. May, p. 206.

[1] For the rules and practice in the case of questions, see Poudra et Pierre, liv. vii. ch. iii., and Supp. 1879–80, § 1539. In the case of interpellations, *Id.*, liv. vii. ch. iv.

pass to the order of the day, and may be orders of the day pure and simple, as they are called, which contain no expression of opinion, or they may be what are termed orders of the day with a motive, such as "the Chamber, approving the declarations of the Government, passes to the order of the day." Several orders of this kind are often moved, and they are put to the vote in succession. The ministers select one of them (usually one proposed by their friends for the purpose), and declare that they will accept that. If it is rejected by the Chamber, or if a hostile order of the day is adopted, and the matter is thought to be of sufficient importance, the cabinet resigns. This is a very common way of upsetting a ministry, but it is one which puts the cabinet in a position of great disadvantage, for a government would be superhuman that never made mistakes, and yet here is a method by which any of its acts can be brought before the Chamber, and a vote forced on the question whether it made a mistake or not. Moreover, members of the opposition are given a chance to employ their ingenuity in framing orders of the day so as to catch the votes of those deputies who are in sympathy with the cabinet, but cannot approve of the act in question.[1] Now if adverse votes

[1] A very good example of the various shades of praise or blame that may be expressed by orders of the day can be found in the *Journal Officiel* for July 9, 1893. There had been a riot in Paris, which had not been suppressed without violence and even bloodshed. The police were accused of wanton brutality, and an interpellation on the subject was debated in the Chamber of Deputies on July 8. The order of the day quoted in the text, "The Chamber, approving the declarations of the government, passes to the order of the day," was adopted, but the following were also moved: —

in the Chamber are to be followed by the resignation of the cabinet and the formation of a new one, it is evident that to secure the proper stability and permanence in the ministry, such votes ought to be taken only on measures of really great importance, or on questions that involve the whole policy and conduct of the

"The Chamber, disapproving the acts of brutality of which the police have been guilty, requests the government to give to the police instructions and orders more conformable to the laws of justice and humanity."

"The Chamber, disapproving the proceedings of the police, passes to the order of the day."

"The Chamber, approving the declarations of the government, and persuaded that it will take measures to prevent the violence of the police officials, passes to the order of the day."

"The Chamber, censuring the policy of provocation and reaction on the part of the government, passes to the order of the day."

"The Chamber, hoping that the government will give a prompt and legitimate satisfaction to public opinion, passes to the order of the day."

"Considering that the government has acknowledged from the tribune that its policy has caused in Paris 'sad occurrences,' 'deeds that must certainly be regretted,' and 'some acts of brutality,' the Chamber takes notice of the admission of the President of the Council, demands that the exercise of power shall be inspired by the indefeasible sentiments of justice, of foresight, and of humanity, and passes to the order of the day."

"The Chamber, convinced that the government of the Republic ought to make the law respected and maintain order, approving the declarations of the government, passes to the order of the day."

"The Chamber, regretting the acts of violence on the part of the police, and taking notice of the declarations of the government, passes to the order of the day."

"The Chamber, approving the declaration whereby the government has announced its desire to put an end to the practices and habits of the police which have been pointed out, passes to the order of the day."

"The Chamber, convinced of the necessity of causing the laws to be respected by all citizens, passes to the order of the day."

In this case, by voting priority for the first of these motions and adopting it, the Chamber avoided the snares prepared for it by the ingenious wording of the others.

administration. It is evident also that they ought not to be taken hastily, or under excitement, but only after the Chamber has deliberately made up its mind that it disapproves of the cabinet, and that the country would on the whole be benefited by a change of ministers. The reverse of all this is true of the French system of interpellations, and a cabinet which in the morning sees no danger ahead, and enjoys the confidence of the Chamber and the nation, may be upset before nightfall by a vote provoked in a moment of excitement on a matter of secondary importance.

The frequency with which interpellations are used to upset the cabinet may be judged by the fact that out of the twenty-one ministries that have resigned in consequence of a vote of the Chamber of Deputies since the cabinet has been responsible, ten have fallen on account of orders of the day moved after an interpellation, or in the course of debate.[1] Several of these orders covered, indeed, the general policy of the cabinet, but others — like the one relating to the attendance of the employees of the state railroads at a congress of labor unions, which occasioned the resignation of Casimir-Perier's ministry in May, 1894 — had no such broad significance.

[1] Cf. Haucour, *Gouv. et Min.;* Muel, *Gouv., Min. et Const.* Among the resignations brought about in this way, I have counted that of Rouvier's cabinet in 1887, although this was caused not by the vote of an order of the day, but by the refusal of the Chamber to postpone the debate on an interpellation, and although the cabinet continued to hold office for a few days pending the resignation of President Grévy. The proportion of ministries that fall on orders of the day seems to be increasing, for of the last six crises caused by a vote of the Chamber, five were due to orders of the day; and of these the last three at least did not involve the general policy of the government.

Moreover, the production of actual cabinet crises is by no means the whole evil caused by interpellations. The enfeebling of the authority of the ministers by hostile votes about affairs on which they do not feel bound to stake their office is, perhaps, an even more serious matter, for no cabinet can retain the prestige that is necessary to lead the Chambers in a parliamentary government, if it is to be constantly censured and put in a minority even in questions of detail. The ministers are not obliged, it is true, to answer interpellations,[1] but unless some reason of state can be given for refusing, such as that an answer would prejudice diplomatic negotiations, a refusal would amount to a confession of error, or would indicate a desire to conceal the fact, and would weaken very much the position of the cabinet.

The large part that interpellations play in French politics is shown by the fact that they arouse more popular interest than the speeches on great measures;[2] and, indeed, the most valuable quality for a minister to possess is a ready tact and quick wit in answering them.[3]

The first two institutions referred to as not in harmony with parliamentary government — that is, the method of electing deputies and the system of committees in the Chambers — have real merit. Both tend to check the tyranny of party, and under a form of government where the existence of two great parties was not essential, they might be very valuable. But, except in a despotism, the interpellation followed by a motion expressing the judgment of the Chamber is a

[1] Poudra et Pierre, § 1555. [2] Simon, *Nos Hommes d'Etat*, p. 27.
[3] Simon, *Dieu, Patrie, Liberté*, p. 379.

purely vicious institution. It furnishes the politicians with an admirable opportunity for a display of parliamentary fireworks; but it is hard to see how, under any form of popular government, it could fail to be mischievous, or serve any useful purpose that would not be much better accomplished by a question followed by no motion and no vote. The plausible suggestion has been made that the administration, being free from supervision by the courts of law, can be brought to account for its acts only in this way;[1] but surely the same result could be as well accomplished by the simpler process of the question, and it is hard to see any reason for imperiling the existence or the prestige of the cabinet to rectify some matter of trifling consequence. The practice arose from the fact that, owing to the immense power of the executive in France, and the frequency with which that power has been used despotically, the legislature has acquired the habit of looking on the cabinet officers as natural enemies, to be attacked and harassed as much as possible.[2] But such a view, which

Jealousy and distrust of the ministers on the part of the Chamber.

[1] See Vicomte d'Avenel, "La Réforme Administrative — La Justice," *Revue des Deux Mondes*, June 1, 1889, pp. 595–96.

[2] M. Dupriez, in the work already cited (vol. ii. p. 253 *et seq.*), has explained the strength of this feeling by a most valuable study of the history of the relations between the ministers and the legislature in France. He points out that it existed at the outbreak of the Revolution, for the *cahiers* or statements of grievances prepared by the meetings of electors held to choose members of the States General in 1789 express a widespread dislike and distrust of all ministers as such. He then shows how the Constituent Assembly tried to curtail the power of the ministers, and reduce their functions to a simple execution of its own orders. It is unnecessary here to follow the subject in detail. It is enough to remark that a large part of the political history of France since the Revolution

is defensible enough when the ministers are independent of the Parliament, becomes irrational when they are responsible to it, and bound to resign on an adverse vote.

Strange as it may seem, the development of interpellations has coincided very closely with that of parliamentary government;[1] and, in fact, the French regard the privilege as one of the main bulwarks of political liberty. It is this same feeling of antagonism to the government that has given rise to the overweening power of the committees in the Chamber, and their desire to usurp the functions of the ministers. The extent to which this feeling is carried by the Radicals is shown by the proposal made a few years ago to divide the whole Chamber into a small number of permanent grand committees, such as existed in 1848, in order to bring the ministers even more completely under the control of the deputies; the ideal of the Extreme Radicals being the revolutionary convention, which drew all the powers of the state as directly and absolutely as possible into its own hands.[2] The less

is filled with struggles for power between the executive and the legislature, in which the former has twice won a complete victory, and deprived the representatives of the people of all influence in the state. Under these circumstances the suspicion and jealousy of the cabinet shown by Liberal statesmen is not surprising.

[1] The practice was first regularly established at the accession of Louis Philippe, the period when cabinets became thoroughly responsible to the Chamber; and it was freely used during the Republic of 1848. After the *Coup d'Etat* it was, of course, abolished; but toward the end of his reign Napoleon III., as a part of his concessions to the demand for parliamentary institutions, gradually restored the right of interpellation. Finally, under the present Republic the right has been used more frequently than ever before. See Poudra et Pierre, §§ 1544–49; Dupriez, vol. ii. pp. 305, 317–18.

[2] Cf. De la Berge, "Les Grands Comités Parlementaires," *Revue des Deux Mondes*, Dec. 1, 1889.

violent Republicans are, no doubt, very far from accepting any such ideal, but still they cannot shake out of their minds the spirit of hostility to the administration which has been nurtured by long periods of absolute rule. They fail to realize that when the ministry becomes responsible to the deputies, the relations between the executive and the legislature are radically changed. The parliamentary system requires an entire harmony, a cordial sympathy, and a close coöperation between the ministers and the Chamber; and to the obligation on the part of the cabinet to resign when the majority withdraws its approval, there corresponds a duty on the part of the majority to support the ministers heartily so long as they remain in office. Parliamentary government, therefore, cannot be really successful in France until a spirit of mutual confidence between the cabinet and the Chamber replaces the jealousy and distrust that now prevail.

Comparison of the French Chamber of 1893 and the English Parliament of 1892.

A comparison of the political history of France and England during the last few years shows to what extent the French procedure interferes with discipline and disintegrates the parties. In England the Liberals came into power after the elections of 1892 with a small majority in the House of Commons; and, although the supporters of the government were far from harmonious, were, in fact, jealous of each other and interested in quite different measures, the perfection of the parliamentary machinery enabled the ministers to keep their followers together and maintain themselves in office for three years. In France, on the other hand, the

elections of 1893 produced a majority which, if not so large, was far more homogeneous; and indeed, if we compare the position of some of the outlying groups with that of certain sections of the English Liberal party, it is fair to say that the majority in France was both larger and more homogeneous. Yet within two years this majority suffered three cabinets which represented it to be overthrown on interpellations about matters of secondary importance, and finally became so thoroughly disorganized that it lost control of the situation altogether.

Results of the condition of parties.

We have surveyed some of the causes of the condition of political parties in France. Let us now trace a few of its results. In the first place, the presence of the Reactionaries deprives cabinet crises of the significance they might otherwise possess. The defeat of the ministers does not ordinarily mean the advent to power of a different party, because there is no other party capable of forming a cabinet,[1] — not the Reactionaries, for they are irreconcilable and hostile to the Republic; nor those Republicans who have helped the Right to turn out the ministers, because by themselves they do not constitute a majority of the Chamber. The new cabinet must, therefore, seek its support mainly in the ranks of the defeated minority, and hence is usually formed from very much the same material as its prede-

Owing to the presence of the reactionaries, a change of ministry does not mean a change of party.

[1] Except in the cases of the recent Bourgeois and Méline cabinets, a change of ministry has never meant the advent to power of a substantially different party since MacMahon yielded to the Republicans in 1877.

cessor. In fact, a number of the old ministers have generally kept their places, at most an attempt being made to gain a little more support from the Right or Left by giving one or two additional portfolios to the Moderates or the Radicals.[1] When a ministry falls, the parliamentary cards are shuffled, a few that have become too unpopular or too prominent are removed, and a new deal takes place. So true is this, that out of the twenty-four ministries that have succeeded each other since President MacMahon appointed a Republican cabinet on December 13, 1877, only three have contained none of the retiring ministers, the average proportion of members retained being about two fifths.[2] Now, the fact that the fall of the cabinet does not involve a change of party has two important effects: by removing the fear that a hostile opposition will come to power, it destroys the chief motive for discipline among the majority;[3] and by making the Chamber feel that a change of ministers is not a matter of vital consequence, it encourages that body to turn them out with rash indifference. The result is that the cabinets are extremely short-lived; and indeed during the twenty-three years the Republic has enjoyed responsible ministries, — that is, since MacMahon's election in May, 1873, — there have been thirty-four of them, so that the average duration of a French

Effects of this.

[1] Lebon, *France as It Is*, p. 94.

[2] Cf. Haucour, *Gouv. et Min.*; Muel, *Gouv., Min. et Const.*; Dupriez, vol. ii. pp. 338, 343. The three exceptions were the cabinets of Brisson in 1885, Bourgeois in 1895, and Méline in 1896.

[3] This is very clearly pointed out by Dupriez, *Les Ministres*, vol. ii. p. 390.

cabinet has been less than eight months and a half.[1] The same fact explains, moreover, the persistence of the system of interpellations, for if a change of ministry does not imply a different programme, there is no self-evident impropriety in overthrowing a cabinet on a question that does not involve a radical condemnation of its policy.

Owing to subdivisions of Republicans, the cabinet is a coalition, and therefore weak.

The subdivision of the Republican party into separate groups has also an important bearing on the character of the ministry. Instead of representing a united party, the cabinet must usually rely for support on a number of these groups, and the portfolios must be so distributed as to conciliate enough of them to form a majority of the Chamber.[2] As a rule, therefore, the cabinet is in reality the result of a coalition, and suffers from the evils to which bodies of that kind are always subject. The members tend to become rivals rather than comrades, and each of them is a little inclined to think less of the common interests of the cabinet than of his own future prospects when the combination breaks up.[3] Such a government, moreover, is essentially weak, for it cannot afford to refuse the demands of any group whose defection may be fatal to

[1] I have not counted the reappointment of the Dupuy ministry on the election of Casimir-Perier to the presidency as the formation of a new cabinet.

[2] The first part of the term of the present Chamber is the only time when the cabinet has been supported by a group which contained by itself anything like a majority of the deputies.

[3] Cf. Dupriez, vol. ii. pp. 348–49. Lebon, *France as It Is*, p. 85, speaks of the never-ending struggles for mastery within the cabinet.

its existence.[1] The ministers are not at the head of a great party that is bound to follow their lead, and yet they must secure the votes of the Chamber or they cannot remain in office. Hence they must seek support as best they may, and as they cannot rule the majority, they are constrained to follow and flatter it;[2] or rather they are forced to conciliate the various groups, and, as the members of the groups themselves are loosely held together, they must grant favors to the individual deputies in order to secure their votes. This is not a new feature in French politics. It is said that during the reign of Louis Philippe, the government kept a regular account with each deputy, showing his votes in the Chamber on one side, and the favors he had been granted on the other, so that he could expect no indulgence if the balance were against him.[3] Nor has the cause of the evil changed. It is the same under the Third Republic that it was under the Monarchy of July, for in both cases the lack of great national parties with definite programmes has made the satisfaction of local and personal interests a necessity.

It must win votes by granting favors.

We are, unfortunately, only too familiar in this country with the doctrine that to the victors belong the spoils. In France we find the same thing, although it is not acknowledged so openly, and is disguised under the name of *épuration*, or the

Political use of offices

[1] Cf. Dupriez, vol. ii. pp. 347–48, 434–35.

[2] Cf. Simon, *Nos Hommes d'Etat*, ch. vii. p. iii.

[3] Hello, *Du Régime Constitutionnel*, quoted by Minghetti, *I Partiti Politici*, p. 101; and see G. Lowes Dickinson, *Revolution and Reaction in Modern France*, pp. 118–20.

purification of the administration from the enemies of the Republic. The practice of turning political foes out of office and substituting one's friends seems to have begun during President MacMahon's contest with the Chamber, when the Reactionary party dismissed a large number of officials who had served under former cabinets.[1] After the Right had been overthrown in 1877, there arose a cry that the Republic ought not to be administered by men who did not sympathize with it, and would naturally throw their influence against it; but although the fear of danger to the form of government was no doubt genuine at first, the cry became before long a transparent excuse for a hunt after office.[2] In speaking of this subject, however, it must be remembered that France is not divided into two great parties which succeed each other in power, and hence a wholesale change of public servants, such as has often taken place after a presidential election in the United States, does not occur. The process is continuous, but slower and less thorough. On the other hand, the evil in France is by no means limited to office-seeking, for owing to the immense power vested in the government, the favors which the deputies demand and exact as the price of their votes extend over a vast field. Nor do they show any false modesty about making their desires known.

and other privileges.

[1] See Channes, pp. 18–19, 231–32.

[2] See the remarkable little book by Edmond Scherer, *La Démocratie et la France;* Channes, *Nos Fautes* (*passim*); Simon, *Nos Hommes d'Etat*, pp. 114–15, and ch. vi. ii.; Dupriez, vol. ii. pp. 502–9; Lamy, *La République en 1883*, pp. 6–8, 22; and see a highly colored account by Hurlbert, "The Outlook in France," *Fortnightly Rev.*, vol. 55, p. 347.

They do not hesitate to invade the executive offices, and meddle directly in the conduct of affairs.[1] Even the prefect, who has the principal charge of local administration, is not free from their interference. He is liable to lose his place if he offends the Republican deputies from his department, and is therefore obliged to pay court to them and follow their lead. In short, the prefect has become, to a great extent, the tool of these autocrats; and his dependence is increased by the fact that nowadays he does not usually remain in office long enough to acquire a thorough knowledge of the local wants, or to exercise a strong personal influence. I do not mean that he has become corrupt; far from it. The level of integrity among French officials appears to be extremely high, and though wedded to routine, their efficiency is great;[2] but the discretion in their hands is enormous, and in using it they must take care not to displease his Majesty the Deputy.[3]

Deputies obliged to curry favor with the local committees.

Of course the deputies do not wield this immense influence to forward their own private ends alone. They are representatives, and must use their position for the benefit of the persons they represent. But whom do they represent? The people at large? No representative ever really does that. So far as he is actuated by purely conscientious motives he represents his own ideas of right, and for the rest he represents primarily the men who have

[1] Dupriez, vol. ii. pp. 435, 507–8; Channes, pp. 253–56; Lamy, pp. 21–26; Laffitte, *Le Suffrage Universel*, pp. 54–59.

[2] Simon, "Stability of the French Republic," *The Forum*, vol. 10, p. 383.

[3] Cf. Channes, Letter of Oct. 1, 1884; Laffitte, pp. 56–58; Dupriez, vol. ii. pp. 471–72, 506–9.

elected him, and to whom he must look for help and votes in the next campaign. In some countries this means the party, and those classes that hang on the skirts of the party and may be prevailed upon to fall into line. But in France there are no great organized parties, and hence we must consider how candidates are nominated there. The government, at the present day, does not put forward official candidates of its own, as was commonly done during the Second Empire;[1] and, indeed, it is not supposed to take an active part in elections. This last principle is not strictly observed, for the administrative officials at times exert no little influence in important campaigns, and the government is said to have spent a good deal of money to defeat Boulanger in 1889. Still there is nothing resembling the control of elections under Napoleon III., and especially there is no interference with the selection of candidates, this matter being left to the spontaneous movement of the voters themselves. The usual method of proceeding is as follows: a number of men in active politics in a commune, or what we should call the wire-pullers, form themselves into a self-elected committee, the members usually belonging to liberal or semi-liberal professions, and very commonly holding advanced views, which are apt to go with political activity in France. The committees or their representatives meet together to form an assembly, which prepares the programme, nominates the candidate, and proclaims him as the candidate of the party.[2] These self-constituted committees,

[1] Simon, *Dieu, Patrie, Liberté*, p. 372.

[2] Simon, *Nos Hommes d'Etat*, pp. 17–25; Scherer, *La Démocratie et la*

therefore, have the nomination entirely in their own hands;[1] and, except in the larger cities, a candidate owes his position largely to local influence and personal interests.[2] Sometimes he has won prominence by a clever speech at a local meeting. Sometimes he has earned gratitude by services rendered in his profession, or otherwise.[3]

After the candidate is nominated, his first care is to issue his programme, and under the system of single electoral districts, each candidate, as has already been observed, has a separate programme, which expresses only his particular views. The active campaign is carried on by means of placards posted on walls and fences, which make a great show, but win few votes; and what is far more effective, by means of newspapers and the stump.[4] The stump, curiously enough, is used

France, pp. 22–24; Reinach, *La Politique Opportuniste*, 186–88; Laffitte, *op. cit.*, pp. 64–69.

[1] Since the system of *scrutin de liste* has been given up and the single electoral districts have been reëstablished, the matter is said to have become somewhat more simplified. It is stated that the nominating committees are now formed, at least in many cases, without any meeting of delegates from the communes; and that their function lies not in the selection of a candidate, but rather in helping the candidate in whose behalf they have been organized, and acting as his sponsors. (See Alfred Naquet, "The French Electoral System," *North American Rev.*, vol. 155, p. 466. But see Charles Benoist, "De l'Organization du Suffrage Universel," *Revue des Deux Mondes*, July 1, 1895, pp. 15–20.) However this may be, the close relations between the deputy and a small self-constituted clique of local politicians, which is the essential point in the French electoral system, remains very much the same.

[2] Simon, *Nos Hommes d'Etat*, pp. 24–25.

[3] Chaudordy, *La France en 1889*, p. 96.

[4] Alfred Naquet, "The French Electoral System," *North American Rev.*, vol. 155, pp. 468–70.

very little except by the candidates themselves,[1] who constantly speak at political rallies, of late years frequently holding joint debates.[2] Far too often, unfortunately, they also truckle to the personal ambition of individual voters by flattery and the promise of favors, a course that deters some of the best men from political life.[3] The wire-pullers, indeed, are not over-anxious for really strong characters, because they prefer men whom they can control, and use for their own purposes.[4] If they want anything they exert a pressure on the deputy, who in his turn brings a pressure to bear on the ministers; and hence it has been a common saying that the electoral committees rule the deputies, and the deputies rule the government.[5]

It is asserted that, since the re-introduction of single electoral districts, the power of the committees has sensibly diminished,[6] and, whether this be true or not, it is

[1] Theodore Stanton, supplement to the article of Alfred Naquet, p. 473.

[2] Alfred Naquet, *Ib.* The newspapers at election time are full of accounts of these meetings for joint debate, called *Réunions publiques contradictoires.*

[3] Cf. Scherer, *La Démocratie et la France*, pp. 24–25, 39. Direct bribery of voters, though not unknown, seems to be rare, but the complaint that elections have been getting a good deal more expensive of late years is general. Naquet, *Ib.;* Reinach, pp. 189–90 ; Simon, *Dieu, Patrie, Liberté*, p. 373 ; *Souviens toi du Deux Décembre*, p. 91.

[4] Channes, *Nos Fautes*, pp. 379–81 ; Laffitte, p. 69 *et seq.*

[5] Channes, pp. 238–39 ; and see Scherer, *La Démocratie et la France*, p. 27; Simon, *Dieu, Patrie, Liberté*, p. 378.

For this reason one frequently hears it said that the deputies do not see the real people, but only their own political dependents. Channes, p. 38 ; Simon, *Souviens toi du Deux Décembre*, pp. 165–66.

[6] Naquet, "The French Electoral System," *North American Rev.*, vol. 155, p. 466. But see on the other side the article of Benoist in the *Revue des Deux Mondes*, July 1, 1895, pp. 17–19.

certainly easy to exaggerate their influence, for the deputy must always consider other people beside the wire-pullers. He must try to strengthen his general popularity throughout his district. He is, indeed, expected to look after the political business of his constituents, and is a regular channel for the presentation of grievances and the distribution of favors; one of the complaints most commonly heard in France being that the deputies represent local and personal interests rather than national ones. But even this does not end his responsibilities. The traditions of centralization which make all France look to Paris for guidance, and the habit of paternal government that makes men turn to the state for aid, have caused many people to regard the deputy as a kind of universal business agent for his district at the capital, and burden him with all sorts of private matters in addition to his heavy public duties. Sometimes this is carried to an extent that is positively ludicrous. A few years ago a couple of deputies gave an account at a public dinner of the letters they had received from their districts. Some constituents wanted their representative to go shopping for them; others asked him to consult a physician in their behalf; and more than one begged him to procure a wet nurse, hearing that this could be done better in Paris than in the provinces.[1] Is it to be wondered that the French deputy should bend under the weight of his responsibilities?

The deputies and their constituents.

If I seem to have drawn a somewhat dark picture of the position of the deputy, I do not want to be under-

[1] This is quoted by Scherer in *La Démocratie et la France*, pp. 34–35.

stood as implying that all deputies are alike; that many of them are not men of high character, who will not yield to the temptation and pressure with which they are surrounded. My object is simply to describe a tendency; to point out a defect in the French political system, and to show clearly the characteristic evils which that defect cannot fail to develop. The recent scandals about the bribery of deputies in connection with the Panama Canal, with which the newspapers were filled for three months, have thrown a dismal light over public life in France, and, although at first the credulous Parisians no doubt exaggerated the extent of the corruption, still there was fire enough under the smoke to show what baleful influences haunt the corridors of the Palais Bourbon.

Prospects of the Republic.

Before closing, let us consider for a moment the political prospects of the country. The generous enthusiasm that greeted the Republic at the outset has faded away, and even its most ardent advocates have found to their sorrow that it has not brought the promised millennium. Such a feeling of disappointment is not surprising. On the contrary, it might have been surely predicted, for in every form of government that has existed in France since the Revolution the period of enthusiasm has been followed by one of disenchantment, and to this latter stage the Republic has come in the natural course of events. Now this period may well be looked upon as crucial, because as yet no form of government in France has been able to live through it. After a political system has lasted about half a generation, the country has always become

disgusted with it, torn it down, and set up another,—a course that has made any steady progress in public life impossible. The effect has, in fact, been very much like that which would be produced by a man who should constantly root out his crops before they came to maturity, and sow his field with new and different seed.

Hitherto no change of party has occurred without a revolution.

The reason for such a state of things is not hard to find. Since the Revolution every form of government in France has been the expression or outward sign of a definite set of political opinions. So close, indeed, has the connection been between the two, that it has been impossible for men to conceive of one without the other, and therefore a fundamental change of opinion has always involved a change in the form of government. Any one who studies the history of the nation will see that there has never been a change of party without a revolution. There has often been a shifting of control from one group to another of a slightly different coloring, but the real party in opposition has never come to power without an overturn of the whole political system. Under the Restoration, for example, the ministers were sometimes Moderate and sometimes extremely Reactionary, but were never taken from the ranks of the liberal opposition. Again, during the Monarchy of July the different groups of Liberals disputed fiercely for the mastery, but neither the Radicals nor the Reactionaries had the slightest chance of coming to power. If space permitted, this truth might be illustrated by taking up in succession each of the gov-

ernments that have flourished since the Revolution, but perhaps it is enough to refer to the only apparent exception that has occurred. While General MacMahon was President of the Third Republic, power was certainly transferred from the Reactionaries to the Republicans, but the circumstances of this case were very peculiar. The Republic had hardly got into working order, and the struggle of the Reactionaries may be looked upon as a final effort to prevent it from becoming firmly established. The French themselves have always considered the occurrence, not as a normal change of party, but as the frustration of an attempt at a *coup d'état* or counter-revolution. This case, therefore, from the fact that it has been generally regarded as exceptional, may fairly be treated as the kind of exception that tends to prove the rule. A revolution in France corresponds in many ways to a change of party in other countries, but with this grave disadvantage, that the new administration, instead of reforming the political institutions, destroys them altogether. Of course such a method puts gradual improvement out of the question, and before the nation can perfect her government she must learn that the remedy for defects is to be sought through the reform, not the overthrow, of the existing system.

One would suppose that under the Republic no such difficulty could arise, because a republic means the rule of the majority, and the majority is sure to be sometimes on one side and sometimes on the other. But this is not the view of most French Republicans, and especially of the Radicals. These men, recognizing

that, on account of a want of training in self-government, the people can be cajoled, or frightened, or charmed, or tricked into the expression of the most contradictory opinions, refuse to admit that any vote not in harmony with their own ideas can be a fair test of the popular will, and assume for themselves the exclusive privilege of declaring what the people really want. As M. Edmond Scherer has cleverly said: "Let us add that the God (universal suffrage) has his priests, whose authority has never been quite clear, but who know his wishes, speak in his name, and, if resistance occurs, confound it by an appeal to the oracle whose secrets are confided to them alone." [1] The Radicals, therefore, cannot admit a possibility that the true majority can be against them, and nothing irritates them so much as to hear the other parties claim that the people are on their own side. It has been said that the Republic will not be safe until it has been governed by the Conservatives,[2] and the remark has a special significance in this connection: first, because, until the Conservatives come to power, it will not be clear whether the Republic has enough strength and elasticity to stand a change of party without breaking down; and second, because the right of the majority to rule, which is the ultimate basis of the consensus on which the Republic must rest, will not be surely established until each party has submitted peaceably to a popular verdict in favor of the other.

[1] *La Démocratie et la France*, p. 18.

[2] "La République et les Conservateurs," *Revue des Deux Mondes*, March 1, 1890, pp. 120–21. This means, of course, the conservative elements among the people, and not merely the conservative Republicans.

That the existing political system will be accepted as final by all classes of the people, so that the republican form of government will cease to be the dogma of a party and become the creed of the whole nation, seems extremely probable; for, if the enthusiasm for the Republic has waned, the passionate attachment for the Monarchy and the Empire has grown cold also. The Republic has passed her first youth, and a generation of men are crowding upon the stage who have not shared the loves and hatreds of their fathers, and who care more for immediate ends than for historic traditions. It is not surprising, therefore, that throughout the country dynastic questions are giving way to others that have a more direct bearing on the welfare of the people. The Holy See has thrown its influence in this direction, and there can be no doubt that if it persists in its present policy, the last Reactionaries must abandon their irreconcilable attitude. Apart, therefore, from war or from some terrible economic convulsion, there is every reason to expect that the Republic will prove lasting.

When the Reactionaries have accepted the Republic, the immediate danger will be, not that they will exert too little influence, but that they will exert too much; that they will rule the Right as the Radicals dominated the Left; that the liberty of the press will be restrained, and the church brought too closely into contact with political affairs, — a course that would be certain to excite violent revolutionary feelings among the Radicals. But this danger also, it may be hoped, will be removed by time, for the peaceful alternation in

power of men of opposite parties, which France as yet has never known, would gradually educate the people, and produce moderate and practical opinions in politics. Moreover, it must be remembered that the Republic has had to contend hitherto not only with deep-seated prejudices derived from the fierce struggles of the last century, but also with a lack of political experience, resulting in an inaptitude for self-government on the part of the nation at large. This has made the people an easy prey to glittering theories and resounding phrases. But free discussion, popular meetings, and attempts at political combination have extended widely within the last few years,[1] and cannot fail to develop a capacity for judging of public affairs that will render the people far less susceptible to the influence of extremists.

Financial dangers.

There is one real danger ahead of the Republic, which cannot be treated too seriously, and that is the condition of the finances. For some time after the war with Germany the treasury was admirably managed, and France astonished the world by the rapidity with which she paid the war indemnity; but before long she fell into the habit, so common in our day, of framing golden dreams of the future, and discounting them at once. She poured out money like water for roads, railroads, and schools; rolled up a huge debt to pay for them, and even then was unable to satisfy the expectations she had awakened among her people.[2] At the same time she built huge fortifications, set up universal military service, and strove to maintain

[1] Lebon, *France as It Is*, p. 94.

[2] See Channes, Letter of Jan., 1885.

a stronger army and a more powerful fleet than her larger neighbor. Meanwhile a bad system of financiering prevented her from seeing how fast she was going. A habit grew up of dividing the expenditure into ordinary and extraordinary, of which the former alone was defrayed out of the annual receipts, while the latter, as something unusual that would not occur again, was provided for by loans. Nevertheless, the items for extraordinary expenses reappeared every year, being in fact a normal part of the budget.[1] Thus the country sank deeper and deeper into debt, with a gloomy prospect of bankruptcy before it in case of war. Fortunately, the finances have of late been put into a much better condition. Instead of the constantly recurring deficits, there has more than once been surplus in the last few years, and what is really of even greater importance, many of the extraordinary expenses have been cut off and transferred to the regular budget.[2] It will probably be a good while before this is done with all of them, and, until the extraordinary budgets are suppressed entirely, the finances of the country will not be upon a thoroughly solid basis. As yet, indeed, the danger has by no means disappeared, because the equilibrium has been brought about by a heavy increase of taxation, and there is always a risk that in a time of

[1] See Simon, *Nos Hommes d'Etat*, ch. iv.

[2] See Dupriez, vol. ii. pp. 419–20; Cucheval-Clarigny, "La Situation Financière et le Budget de 1892," *Revue des Deux Mondes*, Nov. 1, 1891. The credit of this change is due to M. Rouvier, who was for several years Minister of Finance, but who was brought into disgrace in 1893 by having accepted money for campaign purposes from the agents of the Panama Canal.

economic disaster some cabinet, fearing to acknowledge the real condition of the finances, or to add to the taxes, will renew the policy of contracting loans to meet current expenses.

Probable changes in French institutions.

If the Republic proves lasting, the form of its institutions will no doubt be gradually modified, but, whatever changes take place, one thing is clear: the responsibility of the ministers to parliament must be retained. In a country like the United States, where power is split up by the federal system, where the authority in the hands of the executive is comparatively small, and, above all, where the belief in popular government and the attachment to individual liberty and the principles of the common law are ingrained in the race, there is no danger in intrusting the administration to a President who is independent of the legislature. But this would not be safe in France, because, owing to the centralization of the government and the immense power vested in the executive, such a President would be almost a dictator during his term of office; and the temptation to prolong his authority, from public no less than from selfish motives, would be tremendous. Nor, in view of the tendency of the mercantile classes, and even of the peasants, to crave a strong ruler, would it be difficult for him to do so, as Louis Napoleon proved long ago. A President is able to overthrow a popular assembly because the French have long been accustomed to personal government, and because an assembly is incapable of maintaining a stable majority; because, in short, the French know how to work personal but not

representative government: and the danger will continue until parliamentary institutions are perfected, and their traditions by long habit have become firmly rooted. The French President cannot, therefore, be independent, and the only feasible alternative is to surround him with ministers who are responsible to the Chamber of Deputies. But if the parliamentary system must be retained, it is important to remove the defects that it shows to-day, and especially is it necessary, on the one hand, to diminish the autocratic power of the administration, which offers a well-nigh irresistible temptation to both minister and deputy; and, on the other hand, to give the cabinet more stability, more dignity, and more authority; to free it from the yoke of the groups in the Chamber, and from dependence on local interest and personal appetite; to relieve it from the domination of irresponsible committees, and from the danger of defeat by haphazard majorities; to enable it to exert over its followers the discipline that is required for the formation of great, compact parties; to make it, in short, the real head of a majority in parliament and in the nation.

CHAPTER III.

ITALY: INSTITUTIONS.

Causes that delayed the union of Italy.

THE perfection of its organization and the excellence of its laws preserved the life of Rome long after its vital force had become exhausted; and when the Teutonic tribes had once broken through the shell of the western empire, they overran it almost without resistance. Europe sank into a state of barbarism, from which she recovered to find her political condition completely changed. Slowly, during the Middle Ages, the nations were forming, until at last Europe became divided into separate and permanent states, each with an independent government of its own. In two countries, however, — Italy and Germany, — this process of development was delayed by the existence of the Holy Roman Empire, which claimed an authority far greater than it was able to wield, and, while too weak to consolidate its vast dominions into a single state, was strong enough to hinder them from acquiring distinct and national governments. The condition of Italy was further complicated by the presence of the Pope; for although the Papacy was an immense civilizing force in mediæval Europe, yet the constant quarrels of the Pope and the Emperor, and the existence of the States of the Church, tended greatly to prevent the development

of Italy as a nation. The country was broken into a multitude of jarring elements, and even Dante saw no hope of union and order save under the sway of a German emperor. The north of Italy was full of flourishing cities enriched by commerce and manufactures and resplendent with art, but constantly fighting with each other, and, except in the case of Venice, a prey to internal feuds that brought them at last under the control of autocratic rulers.[1] The south, on the other hand, fell under the dominion of a series of foreign monarchs, who were often despotic, and, by making the government seem an enemy of the governed, destroyed in great measure the legal and social organization of the people. For thirteen centuries — from the reign of Theodoric the Ostrogoth to the time of Napoleon — the greater part of Italy was never united under a single head, and in both of these cases the country was ruled by foreigners. Yet short-lived and unnatural as the Napoleonic Kingdom of Italy was, it had no small effect in kindling that longing for freedom and union which was destined to be fulfilled after many disappointments.

Sardinia takes the lead in Italy in the struggle for Italian independence.

By the treaty of Vienna, in 1815, Italy was again carved into a number of principalities, most of them under the direct influence of Austria. Most of them, but not all, for in the north-western corner of the peninsula, between the mountains and the sea, lay Piedmont, ruled by a prince of the house of Savoy, with the title of King

[1] Genoa was torn with factions, and was at times, though not permanently, subject to Milan or to France.

of Sardinia. During the great popular upheaval of 1848, Charles Albert, a king of this line, granted to his people a charter called the Statuto, and in that year and the following he waged war with Austria for the liberation of Italy. He was badly beaten, but succeeded in attracting the attention of all Italians, who now began to look on the King of Sardinia as the possible saviour of the country. After his second defeat, at Novara, on March 23, 1849, Charles Albert abdicated in favor of his son, Victor Emmanuel, who refused to repeal the Statuto in spite of the offers and the threats of Austria, — an act that won for him the confidence of Italy and the title "Il Re Galantuomo," the King Honest Man. The reliance, indeed, which Victor Emmanuel inspired was a great factor in the making of Italy; and to this is due in large part the readiness with which the Italian revolutionists accepted the monarchy, although contrary to their republican sentiments. In fact, the chivalrous nature of the principal actors makes the struggle for Italian unity more dramatic than any other event in modern times.[1] The chief characters are heroic, and stand out with a vividness that impresses the imagination, and gives to the whole history the charm of a romance. Victor Emmanuel is the model constitutional king; Cavour, the ideal of a cool, far-sighted statesman; Garibaldi, the perfect chieftain in irregular war, dashing, but rash and hot-headed; Mazzini, the typical

The Statuto.

Accession of Victor Emmanuel.

Dramatic character of the struggle.

[1] Professor Dicey speaks of this, and draws a comparison between Italian and Swiss politics, in a letter to *The Nation* of Nov. 18, 1886.

conspirator, ardent and fanatical; — all of them full of generosity and devotion. The enthusiasm which their characters inspired went far to soften the difficulties in their path, and to help the people to bear the sacrifices entailed by the national regeneration. Over against these men stands Pius IX., who began his career as a reformer, but, terrified by the march of the revolution, became at last the bigoted champion of reaction. The purity of his character and the subtle charm of his manner fitted him to play the part of the innocent victim in the great drama.

Cavour's plan of an Italian confederation.

When Cavour first became prime minister of Victor Emmanuel in 1852, his plan was a confederation of the Italian States under the Pope as nominal head, but practically under the lead of the King of Sardinia. Now, in order to make this plan a success, it was necessary to exclude the powerful and reactionary House of Habsburg from all influence in the peninsula, and with this object he induced Napoleon III. to declare war against Austria in 1859; but when the Emperor brought the war to a sudden end by a peace that required the cession of Lombardy alone, and left Venice still in the hands of the enemy, Cavour saw that so long as Austria retained a foothold in Italy, many of the principalities would remain subject to her control. He therefore changed his scheme, and aimed at a complete union of Italy under the House of Savoy.[1] The whole country was ready to follow the lead

Changed to a plan for a united kingdom.

[1] Jacini, *I Conservatori e l' Evoluzione dei Partiti Politici in Italia*, p. 55 *et seq.*

of Victor Emmanuel, and, except for Venice and Rome, which were guarded by foreign troops, the march of events was rapid. The people of the northern States had already risen and expelled their rulers, and early in 1860 they declared for a union with Sardinia. Later in the same year Garibaldi landed at Marsala with a thousand men, roused the country, and quickly overran Sicily and Naples, which decided by popular vote to join the new kingdom, — a step that was soon followed by Umbria and the Marches. The rest of Italy was won more slowly. Venice was annexed in 1866, as a result of the war fought against Austria by Prussia and Italy; and Rome was not added until 1870, after the withdrawal of the French garrison and the fall of Napoleon III., who had sent it there to protect the Pope.

Government of the Kingdom of Italy.

The Statuto.

It is curious that Sardinia expanded into the Kingdom of Italy without any alteration of its fundamental laws, for the Statuto, originally granted by Charles Albert in 1848, remains the constitution of the nation to-day. It has never been formally amended, and contains, indeed, no provision for amendment. At first it was thought that any changes ought to be made by a constituent assembly, and in 1848 a law was passed to call one, although, on account of the disastrous results of the war, it never met. By degrees, however, an opinion gained ground that the political institutions of Italy, like those of England, could be modified by the ordinary process of legislation. This has actually been done, to a greater or less extent, on several occasions;

and now both jurists and statesmen are agreed that unlimited sovereign power resides in the King and Parliament.[1] The Statuto contains a bill of rights; but, except for the provision forbidding censorship of the press, and perhaps that protecting the right of holding meetings,[2] it was not designed to guard against oppression by the legislature, but only by the executive. The Statuto is, in fact, mainly occupied with the organization of the powers of state, and has gradually become overlaid with customs, which are now so strong that many Italian jurists consider custom itself a source of public law. They claim, for example, that the habit of selecting ministers who can command a majority in Parliament has become binding as part of the law of the land.[3]

Let us consider the powers of state in turn, beginning with the King and his ministers, then passing to the Parliament, then to the local government and the judicial system, and finally to the position of the Catholic church.

[1] Brusa, *Italien*, in Marquardsen's *Handbuch*, pp. 12–16, 181–82; Ruiz, "The Amendments to the Italian Constitution," *Ann. Amer. Acad. of Pol. Sci.*, Sept., 1895. It may be noted that the various contributions to Marquardsen's work are of very different value, and that Brusa's is one of the best. He remarks (p. 15) that, before changing any constitutional provision, it has been customary to consult the people by means of a general election, and that it is the universal opinion that Parliament has not power to undo the work of the popular votes by which the various provinces were annexed; in other words, that Parliament cannot break up the kingdom. It has been suggested that the courts can consider the constitutionality of a law which involves a forced construction of the Statuto, but this view has not prevailed. (Brusa, pp. 182, note 3, 229–30.)

[2] Arts. 28, 32.

[3] See Brusa, p. 19.

The King.

At the head of the nation is the King, whose crown is declared hereditary, according to the principles of the Salic law; that is, it can be inherited only by and through males.[1] It sounds like a paradox to say that the King is a constitutional sovereign, but that the constitution does not give a correct idea of his real functions, and yet this is true. By the Statuto, for example, his sanction is necessary to the validity of laws passed by the Parliament,[2] but in point of fact he never refuses it.[3] Again, the constitution provides that treaties which impose a burden on the finances or change the territory shall require the assent of the Chambers,[4] leaving the Crown free to conclude others as it thinks best; but in practice all treaties, except military conventions and alliances, are submitted to Parliament for approval.[5] The King is further given power to declare war, to appoint all officers, to make decrees and ordinances, to create Senators, to dissolve the Chamber of Deputies, and so forth;[6] but the Statuto also provides that no act of the government shall be valid unless countersigned by a minister; and in fact all the powers of the King are exercised in his name by the ministers, who are responsible to the popular House.[7] He is, indeed, seldom present at

Power actually exercised by him.

[1] Statuto, Art. 2.
[2] Statuto, Art. 7.
[3] Brusa, pp. 105, 153; cf. Dupriez, vol. i. pp. 281, 292–97.
[4] Statuto, Art. 5.
[5] Brusa, p. 106.
[6] Statuto, Arts. 5–9.
[7] Statuto, Art. 67; and see Brusa, p. 105.

cabinet meetings, and has little or no direct influence over current domestic politics,[1] although it is said that his personal opinion has a good deal of weight on the relations with foreign states.[2] When, however, a cabinet crisis occurs and the ministry resigns, the King has a great deal of latitude in the appointment of its successor; for the Chamber is not divided into two parties, one of which naturally comes into power when the other goes out, but, as in France, it is split up into a number of small groups, so that every ministry is based upon a coalition. The King can, therefore, send for almost any one he pleases and allow him to attempt to form a cabinet. It often happens, moreover, that the man selected feels that he cannot get the support of a majority in the existing Chamber, but, hoping for a favorable result from a new election, is willing to undertake to form a cabinet if allowed to dissolve Parliament. In such cases the King exercises his own discretion, and grants permission or not as he thinks best; for, contrary to the habit in France, dissolutions in Italy are by no means rare. Thus the Italian King, although strictly a constitutional monarch tied up in a parliamentary system, is not quite so powerless as the French President or the English Queen.

The ministers.

In the selection of his ministers the King is not limited by law to members of Parliament, but, if a man is appointed who is not a member of either House, he is obliged by custom to become a can-

[1] Brusa, p. 108. Dupriez, vol. i. p. 289, says that he presides only when peculiarly important matters are under discussion.

[2] Dupriez, vol. i. p. 296. This is a common opinion.

didate for the next vacant seat in the Chamber of Deputies, unless he is created a Senator.[1] As in other parliamentary governments on the Continent, however, the ministers and their under-secretaries have a right to be present and speak in either Chamber, although they can vote only in the one of which they happen to be members.[2] The work of the Parliament is, indeed, chiefly directed by them; for, while individual members have a right to introduce bills, the power is used only for matters of small importance.[3] As a rule, each minister has charge of a department of the administration; but it is allowable, and was at one time not uncommon, to appoint additional ministers without portfolios, whose duties consisted solely in helping to shape the policy of the government, and defending it in the Chambers.[4]

The Senate.

The Italian Parliament has two branches,—the Senate and the Chamber of Deputies. The Senate is composed of the princes of the royal family,[5]

[1] Brusa, p. 108; and the same thing is true of the parliamentary under-secretaries. *Id.*, p. 196.

[2] Statuto, Art. 66; Law of Feb. 12, 1888, Art. 2.

[3] Brusa, p. 172. Dupriez (vol. i. p. 308) says that the ministers in Italy have not so complete a monopoly of initiative as in other countries, and that private members often propose measures with success. But in saying this he must not be understood to deny that the laws enacted as a result of private initiative are unimportant compared with the government measures, both as regards number and character.

[4] Brusa, p. 197. See, also, the lists of the different ministries published in the Manual of the Deputies. This manual, by the way, is a most valuable production, for it contains the text of many important laws and a large amount of interesting information. For the organization and functions of the various departments, see Brusa, p. 200 *et seq.*

[5] Statuto, Art. 34.

and of members appointed by the King for life from certain categories of persons defined by the Statuto.[1] These are: bishops;[2] sundry high officials, civil, military, and judicial;[3] deputies who have served three terms, or six years;[4] men who have been for seven years members of the Royal Academy of Science; men who pay over three thousand lire (about six hundred dollars) in taxes;[5] and men deserving exceptional honor for service to the state. Owing to the extreme severity of the Senate in recognizing such desert, no appointment from the last class has been made since 1879; for the Senate itself has the strange privilege of deciding whether a person selected by the King belongs properly to one of these classes, and is qualified to be a Senator.[6] Except for money bills, which must be presented first to the Chamber of Deputies, the legislative powers of the two Houses are the same, but the Senate has also judicial functions. It can sit as a court to try ministers impeached by the Chamber of Deputies; to try cases of high treason and attempts on the safety of the state;[7]

Its composition

and powers.

[1] Statuto, Art. 33. All the appointed members must be forty years old.

[2] Since the quarrel with the Pope in 1870 this class has not been available. Brusa, p. 119.

[3] Except in the case of the highest officials, persons of this class can be appointed only after a period of service which varies from three to seven years, according to the office they hold. In 1890 there were over one hundred Senators from this class. *Id.*, p. 119.

[4] Out of a total of about three hundred and sixty, there were about one hundred Senators from this class. *Id.*, p. 119.

[5] There were about one hundred Senators from this class also. *Id.*, p. 119, note 3.

[6] Brusa, p. 119; and see the Statuto, Art. 60.

[7] Statuto, Art. 36.

and to try its own members, — the Italians, curiously enough, having copied in their Senate the antiquated privilege which entitles the English Peers to be tried for crime only by members of their own body.[1] As a matter of fact, the Senate has very little real power, and is obliged to yield to the will of the Lower House.[2] In 1878–80 it did, indeed, refuse to abolish the unpopular grist-tax for more than a year, but gave way before a newly elected Chamber of Deputies.[3] It would probably not venture even so far to-day, for the number of Senators is unlimited, and on several occasions a large batch of members has been created in order to change the party coloring of the body, — in 1890 as many as seventy-five having been appointed for this purpose at one time.[4] As in other countries where the parliamentary system exists, the cabinet is not responsible to the Upper House; and it is only occasionally, and as it were by accident, that a minister has resigned on account of an adverse vote in the Senate.[5]

The Chamber of Deputies.

The Chamber of Deputies consists of five hundred and eight members, elected on a limited franchise. By the earlier law, the suffrage was so restricted that less than two and a half per cent. of the population were entitled to vote; but this

[1] Statuto, Art. 37.

[2] The changes made by the Senate in bills have usually a legal rather than a political importance. Dupriez, p. 313.

[3] Brusa, pp. 155–56. See Petruccelli della Gattina, *Storia d' Italia, 1860–1880*, pp. 420–21, 558–59.

[4] In 1886 forty-one were appointed together, and in 1892 forty-two. See the list of Senators with their dates, in the Manual of the Deputies for 1892, p. 806 *et seq.*, and p. 876.

[5] Brusa, p. 158, note 3.

was felt to be too small a proportion, and in 1882 it was increased by an act whose provisions are still in force.[1] By this statute a voter must be able to read and write, and must have passed an examination on the subjects comprised in the course of compulsory education,[2] except that the examination is not required in the case of officials, professional men, graduates of colleges, and others who could, of course, pass it; nor in the case of men who have received a medal for military or civil service, or who pay a direct tax of nineteen lire and four fifths (about four dollars), or who pay rents of certain amounts. The change more than tripled the quantity of voters at once;[3] and, although these still include only a small part of the citizens, it is to be observed that with the spread of elementary education their number will gradually increase until the suffrage becomes substantially universal.[4]

The franchise.

At first the members were chosen each in a separate district, but after the times of enthusiasm for Italian unity were over, and the generous impulse that had

[1] Brusa, pp. 122–27. This law, with its amendments, recodified in 1895, may be found in full in the Manual of the Deputies for that year.

[2] Education is compulsory in Italy only between the ages of six and nine. Act of July 15, 1877, Art. 2.

[3] It raised the number from 627,838 to 2,049,461. Brusa, p. 127. When the law went into effect, the voters were not very unequally divided into those who passed the examination, those who paid the taxes, and the other excepted classes. *Id.*, p. 126, notes 1–2.

[4] In order to restrict the arbitrary influence of the government over elections, and to prevent the abuses which had been common before, a procedure for preparing the lists of voters and insuring the secrecy of the ballot was established by the same law (see Brusa, pp. 127–28, 130–32); and in this connection it is to be noticed that soldiers and sailors in active service (including subalterns and police officials) are not allowed to vote. Law of March 28, 1895, Art. 14.

stirred the country began to give way before the selfish motives of every-day life, it was found that the deputies failed to take broad views of national questions, and were largely absorbed by personal and local interests. It was found, in short, that they represented the nation too little and their particular districts too much;[1] and it was hoped that by increasing the size of the districts they would be freed from the tyranny of local influence, and enabled to form compact parties on national issues.[2] With this object the Act of 1882 distributed the five hundred and eight seats among one hundred and thirty-five districts, which elected from two to five deputies apiece;[3] and, in order to give some representation to minorities, it was provided that in those districts which elected five deputies no one should vote for more than four candidates.[4] The new system, called the *scrutinio di lista*, did not produce the results that were expected from it. On the contrary, in Italy as in France, where the same remedy was applied to the same evil, the organization and power of the local wire-pullers grew with the increase in the number of deputies elected in a district, while the influence of the latter over the ministers and the provincial officers was greater than ever before.[5] An Act of May 5, 1891, has therefore

[1] Brusa, p. 16.

[2] Minghetti, *I Partiti Politici*, p. 18; Petruccelli della Gattina, p. 504.

[3] Three districts elected two deputies, sixty-one elected three, thirty-six elected four, and thirty-five elected five. Brusa, p. 129. See Arts. 44 and 45 of the Act of 1882, and the table of districts annexed thereto.

[4] Act of 1882, Art. 65.

[5] Brusa, *Ib.*; and see Turiello, *Governo e Governati in Italia*, 2d ed.; *Fatti*, p. 326; *Proposte*, p. 171.

abolished the *scrutinio di lista* and reëstablished single electoral districts.[1]

Qualification of the deputies.

In accordance with the general practice in Europe, the deputies are not required to be residents of their districts, the only important limitations on the choice of candidates being the requirement of the age of thirty years, and the provision excluding priests who have active duties, mayors and provincial counselors in their own districts, and all officials paid from the treasury of the state with the exception of ministers, under-secretaries, and a few others.[2] The deputies receive no pay for attendance, but are given free passes over the railroads,[3] and it is no doubt partly for this reason that the small attendance in the Chamber has long been a crying evil.

The term of the Chamber.

The Chamber is elected for five years, but so far its life has always been cut short by a dissolution, and in fact the average length of term has been less than three years.[4] The budget and the contingent of recruits are adjusted by

[1] This law is printed in the Manual of the Deputies for 1892, in place of Arts. 44, 45, of the Act of 1882.

[2] Brusa, pp. 132–34; and see Acts of Dec., 1860 (Arts. 97, 98), July 3, 1875, May 13, 1877, July 5, 1882, March 28, 1895 (Arts. 81–89). There is a curious provision that only forty officials of all kinds (except ministers and under-secretaries), and among them not more than ten judges and ten professors, can be deputies at the same time, and if more are elected they are reduced to that number by lot. Law of March 28, 1895, Art. 88. On account of some scandals that occurred at one time it is further provided that no officers of companies subventioned by the state, and no government contractors, can sit in the Chamber. Brusa, p. 134; law of March 28, 1895, Arts. 84–85.

[3] Brusa, pp. 159–60.

[4] *Id.*, p. 139.

annual laws, and there would naturally be a new session every year; but in order not to interrupt the work of Parliament, and especially the consideration of the budget, which is apt to be behindhand, a curious habit has grown up of prolonging the sessions, so that three recent Parliaments have had only a single session apiece, one lasting two and a half and another three and a half years, all of them unbroken save by occasional recesses.[1]

The President.

The Chamber of Deputies elects its own President and other officers, and the vote for President used to be an occasion for a trial of party strength, as in most other legislative bodies. Of late years, however, the English habit has prevailed of re-electing the same man without regard to party affiliations;[2] and this is the more striking because the President appoints the committees on rules and contested elections,[3] which have, of course, no little importance. The idea that the presiding officer ought to be strictly impartial is not the only valuable suggestion the Italians have derived from England, for they have inherited Cavour's admiration for British parliamentary procedure, and in general they attempt to follow it. Unfortunately they have not done so in all cases, for, as we shall see when we come to consider the actual working of the govern-

[1] Brusa, p. 139; and see the list of the sessions of the various Parliaments in the Manual of the Deputies.

[2] Brusa, pp. 140 and 156, note 2. Biancheri was President of the Chamber continuously from 1884 to 1892. Manual of the Deputies for 1892 (pp. 800–802). In that year he was dropped for party reasons, and in fact the practice of looking on the President as the representative of a party has unfortunately revived.

[3] Rules of the Chamber of Deputies, Art. 12.

ment, the system of committees and of interpellations or questions has been copied mainly from the French and not the English practice.

Such, briefly stated, are the position of the King and the composition of the Parliament; but although the King and his ministers on the one hand, and the Parliament on the other, are the great political forces whose interaction determines the character of the government, still it is impossible to appreciate the relations between the two, without some knowledge of the method of administration, the principles of local government, and the control exercised by the courts of law, because these matters have a direct bearing on the functions of the cabinet, and hence on the nature of the influence exerted upon it by the Parliament.

The administrative system of Italy copied from that of France.

The administration both of national and local affairs, and to some extent the judicial system of Italy, are modeled on those of France, and they present the defects without all the advantages of the original. This is particularly true of the administrative system, where Italy has copied the centralization, but has been unable to acquire the traditions which give real solidity to the body of officials. At first sight it seems strange that Cavour and his successors, with their admiration for English institutions, should have turned to the French bureaucracy as a pattern; but there were several reasons for their course. In the first place the Napoleonic rule had already made the Italians familiar with the French form of administration. A far stronger motive came from the fact that after Cavour

Reasons for this.

gave up the idea of a confederation, and strove to create a united kingdom of Italy, it became important, in view of the possible interference of foreign powers, to consolidate the different provinces as completely and rapidly as possible. The Italian statesmen tried, therefore, to make the people homogeneous; to remove as far as possible all local differences; and to destroy all possibility of local opposition.[1] The country, moreover, was very backward, and a great work of regeneration had to be undertaken, especially in the south, where society was badly disintegrated and brigandage was rife. To accomplish this a highly centralized and autocratic system, in which the government could make itself quickly and decisively felt, was thought essential;[2] and it was believed, not without reason, that until the union was accomplished, and order had been established in Naples and Sicily, it was impossible to introduce general local self-government or universal liberty. The old territorial divisions were therefore swept away, and replaced by artificial districts devoid, of course, of real local life. A centralized form of administration was set up, and the government was given a highly arbitrary power to interfere with the freedom of the individual. Such a system might have worked very well in the hands of a wise dictator, but, as some of the Italian writers have themselves remarked, it was so entirely inconsistent with the parliamentary form of government that one of them was sure to spoil

[1] See Brusa, pp. 23, 337; Jacini, *I Conservatori*, p. 55 *et seq.*, *Due Anni di Politica Italiana*, pp. 93-94.

[2] See Brusa, pp. 253–54.

the other, and experience has shown that both of them have suffered grievously from the combination.[1]

Contrast in Italy between theory and practice of government.

There is a marked contradiction in Italy between the theory and practice of government; for there is a strong ambition to be abreast of the times and a general belief in the principle of personal liberty; but the actual condition of the nation has made it impossible to live up to these standards. A striking example of the contrast between aspirations and results is furnished by the state of the criminal law, for capital punishment has been abolished, in spite of the fact that homicide is more common than in any other civilized country in Europe,[2] and yet criminal procedure is in such a condition that thousands of people have been arrested on suspicion, kept in prison sometimes for years, and finally released because there was not sufficient ground for trial.[3] Thus by her code Italy appears to be in advance of most other nations, but in her criminal practice she is really far behind them. The truth is that

[1] Cf. Jacini, *I Conservatori*, pp. 67–68; Minghetti, *I Partiti Politici*, p. 100; Pareto, "L'Italie Economique," *Revue des Deux Mondes*, Oct. 15, 1891; and see Bertolini, "I Pieni Poteri per le Riforme Organiche," *Nuova Antologia*, June 1, 1894.

[2] Turiello, *Fatti*, pp. 330–32.

[3] See Speyer, in *Unsere Zeit*, 1879, vol. i. p. 576. Petruccelli della Gattina says (*Storia d' Italia*, p. 258) that in 1876, 93,444 persons were arrested on suspicion and let off because there was no ground for trial. This, it is true, was eleven years before the code was finally enacted; nevertheless it illustrates the contrast between ideals and practice in criminal matters, and in fact in that very year the abolition of the death penalty was voted by the Chamber of Deputies, but rejected by the Senate.

the successive governments, in view of the unsettled state of the country, have been afraid to place restraints on their own power, and weaken an authority thought necessary for the preservation of order. Of course the result has been a good deal of arbitrary officialism and disregard of the rights of the citizen,[1] but while this is a misfortune for the north of Italy, extraordinary and autocratic power has at times been indispensable in Sicily and the south.[2] The impossibility, indeed, of giving effect to the theories of liberty that are constantly proclaimed from every quarter was forcibly illustrated by the only serious attempt that has been made to do so. When Cairoli and Zanardelli became ministers in 1878 they tried to carry out their principles thoroughly. They permitted the constitutional right of public meeting to be freely exercised, and gave up the despotic practice of preventive arrest, trusting to the courts to punish offenders against the law; but brigandage increased so fast, and other disturbances became so alarming, that the cabinet was driven from office, and its policy was abandoned. Of late years Zanardelli has again held office, and has succeeded in improving the administrative and judicial system to some extent, but the progress of the reform has been extremely slow, and the arbitrary power of the government, although reduced, still conforms even in quiet times far more nearly to French than to Anglo-Saxon notions.

There are two matters in connection with the admin-

[1] Cf. Brusa, p. 183.

[2] Cf. Speyer, in *Unsere Zeit*, 1879, vol. i. p. 581.

istration that require special notice. One of them is the power of the executive officials to make ordinances. This is even more extensively used than in France, and there are complaints that it is sometimes carried so far as to render the provisions of a statute nugatory,[1] although the constitution expressly declares that "the King makes the decrees and regulations necessary for the execution of the laws, without suspending their observance or dispensing with them."[2] The interpretation put upon this provision is in fact so broad that the government is practically allowed to suspend the law subject to responsibility to Parliament, and even to make temporary laws which are to be submitted to Parliament later, — a power that is used when a tariff bill is introduced, to prevent large importations before the tariff goes into effect.[3] The Parliament has, moreover, a habit of delegating legislative power to the ministers in the most astonishing way. In the case of the recent criminal code, for example, the final text was never submitted to the Chambers at all, but after the subject had been sufficiently debated, the government was authorized to make a complete draft of the code, and then to enact it by royal decree, harmonizing it with itself and with other statutes, and taking into account the views ex-

The ordinance power.

[1] Brusa, pp. 170–72.

[2] Statuto, Art. 6. The courts have power to refuse to apply an ordinance which exceeds the authority of the government, but, in practice, this is not an effective restraint. Brusa, pp. 171–72, 175, 187.

[3] Brusa, pp. 186–87. In 1891 the customs duties on several articles were increased by royal decree, which was subsequently ratified by Parliament.

pressed by the Chambers. The same was true of the electoral law of 1882, of the recent laws on local government and on the Council of State, and of many other enactments.[1] It may be added that although the Statuto does not expressly provide for it, the ministers, prefects, syndics, and other officials are in the habit of making decrees on subjects of minor importance.[2] The preference indeed for administrative regulations, which the government can change at any time, over rigid statutes is deeply implanted in the Latin races, and seems to be especially marked in Italy.[3]

The civil service and its use for political purposes.

The other matter referred to as requiring special notice is the civil service. The host of officials, who are, unfortunately, too numerous and too poorly paid,[4] can be appointed or dismissed very much at the pleasure of the government, for although there are royal decrees regulating appointments and removals in many cases, they

[1] Brusa, pp. 175–76; Bertolini, "I Pieni Poteri," *Nuova Antologia*, June 1, 1894. Several laws of this kind may be found in the Manuals of the Deputies. They are issued in the form not of statutes, but of ordinances, and begin by reciting the legislative authority under which they are made. It is a curious fact that Italian statutes vary a great deal, sometimes containing only general principles, and leaving to the government the task of completing them by supplementary regulations, and sometimes going into minute details (Brusa, p. 171). Dupriez, who looks at the matter from a French standpoint, says (vol. i. p. 336) that in the struggle between the government and the Parliament over the limits of the ordinance power, the government has tried to extend its authority beyond measure, and the Parliament to dispute it even in the matter of organizing the administrative service.

[2] Brusa, pp. 188–90.

[3] Minghetti, pp. 293–94.

[4] Brusa, p. 260.

do not appear to furnish a satisfactory guarantee.[1] Here, then, is a great mass of spoils, in the distribution of which the politicians take an active part.[2] In 1889 a bill on the tenure of office, fixing rules for the appointment of officials, and preventing their removal except with the approval of a permanent commission, passed the Senate, and was favorably reported in the Chamber of Deputies, but failed to become law owing to the dissolution of Parliament.[3] It will, no doubt, be enacted before long, and then one of the great evils of Italian politics will be removed.[4]

Let us look for a moment at the local government.

[1] Dupriez, vol. i. pp. 337–40 ; Brusa, pp. 252–55. For the scope of these decrees, see p. 261 *et seq.*

[2] Brusa, pp. 152–53 ; and see Dupriez, vol. i. pp. 340–42.

[3] Brusa, pp. 251.

[4] There are two bodies that exercise a considerable control over the government. One of these is the Council of State, which has, however, only an advisory power, except in matters of administrative justice, and in the case of provincial and communal officials whom it protects from arbitrary removal. On this subject see Brusa, p. 212 *et seq.* The laws of June 2, 1889, which regulate this body, may be found in the Manual of the Deputies for 1892, p. 357. The other is the Courts of Accounts (*Corte dei Conti*), whose members can be removed only with the consent of a commission composed of the Presidents and Vice-Presidents of both Chambers. It has a limited supervision over the collection of the revenue, and passes finally on pensions and on the accounts of officials, provinces, and communes. It also makes a yearly report to Parliament on the accounts of each ministry ; but its most extraordinary function consists in the fact that all decrees and orders which involve the payment of more than 2,000 lire must be submitted to it for registration, and if it thinks them contrary to the laws or regulations it can refuse to register them. It is, indeed, obliged to register them if the Council of Ministers insists upon it, but in that case they must be transmitted to the Presidents of the Chambers together with the opinion of the *Corte dei Conti.* Law of Aug. 14, 1862, Arts. 14, 18, 19 ; and see Brusa, pp. 219–24.

Local government.

The Italian statesmen had at first a general belief in decentralization,[1] but the force of circumstances and a repugnance to the idea of federation were so strong that the old territorial divisions, which could alone have furnished a solid basis for a decentralized system, were abandoned, and the whole country was cut up into a series of brand-new districts. These are the provinces, the circondari, the mandamenti, and the communes,[2] of which the first and the last are the only ones of great importance. Until the Act of 1888, the powers conferred on the local bodies were extremely small, and even now they are far from extensive, for the whole system is copied from that of France, and, with some variations in detail, the organization and powers of the French local officers and councils have been followed very closely.[3] A general description of the local government would therefore consist very largely in a repetition of what has been already said in the first chapter on France; and hence it is only necessary to touch on a few salient points, begging the reader to remember how great a power and how large a share of political patronage this

[1] In 1868 the Chamber actually voted an order of the day in favor of decentralization. Petruccelli della Gattina, pp. 192–95.

[2] In the provinces of Mantua and Venice the division is somewhat different, but is being brought into accord with the general plan. Brusa, p. 339.

[3] For a description of the local government see Brusa, p. 337 *et seq.* The full text of the law on the subject was fixed by royal ordinance on Feb. 10, 1889, in accordance with the Act of Dec. 30, 1888. It was followed by an elaborate ordinance regulating its execution, and on July 7, 1889, and July 11, 1894, by acts amending the law. Manual of Deps., 1895, pp. 301–94.

system places in the hands of the central authorities.[1] At the head of each province, which corresponds to the French department, is a prefect appointed by the King, and directly subject to the Minister of the Interior. Like his French prototype, he is regarded as a political officer, and uses his influence more or less openly at elections.[2] The chief executive magistrate of the commune is the syndic; who is chosen, like the mayor in France, by the communal council from its own members, if the commune has more than ten thousand inhabitants or is the capital of a province or circondaro; and in other cases is selected by the King from among the members of the council.* As in France, both the provinces and the communes possess elected councils. In Italy they are chosen for six years, one half being renewed every three years; but the suffrage for these bodies was exceedingly restricted, until by the Act of 1888 it was extended so as to be somewhat wider, especially as applied to the peasants, than the suffrage for the election of deputies.[3] The abuse of local machinery for

[1] In practice the administration appears to be, if anything, even more centralized than in France, owing to the habit on the part of the officials of referring everything to the central government. Jacini, *I Conservatori*, p. 130; Minghetti, *I Partiti Politici*, pp. 240–41.

[2] Brusa, pp. 225, 277. On the eve of the elections in 1892, forty-six out of the sixty-nine prefects were dismissed or transferred to other provinces, in order to help the government to carry the country.

* By a law of July 7, 1896, all the syndics are now elected.

[3] The other communal and provincial bodies are the municipal giunta, which is elected by the communal council, and has executive powers; the provincial deputation, which occupies a similar position in the province, and is elected by the provincial council; the prefectoral council, appointed by the central government to assist the prefect; and the provincial administrative giunta, partly appointed and partly elected, which

political purposes, and the results on the public life of the nation, will be discussed later; but it is proper to remark here that the resources of the local bodies are not adequate for the fulfillment of their duties, and this, combined with a love of municipal display, has been the cause of heavy debts, especially in the case of the larger cities, many of which have long been on the verge of bankruptcy.[1]

The judicial system.

There is one branch of the Italian government which has not been centralized, and that is the judicial system. The lower courts are, indeed, new creations, organized on a symmetrical plan very much resembling the French; but, in order apparently not to offend the bench and bar of the old principalities, the highest courts have been suffered to remain in the more important capitals, so that there are now five independent Courts of Cassation, those of Turin, Florence, Naples, Palermo, and Rome, each of which has final and supreme authority, within its own district, on all questions of ordinary civil law.[2] The Court of Cassation at Rome has, it is true, been given little by little exclusive jurisdiction over certain special matters;[3] but the ordinary civil

Its decentralization.

has a certain share in administrative justice, and whose approval is necessary for the validity of some of the most important acts of the local councils. For a list of these acts see the Local Government Law of Feb. 10, 1889, Arts. 142, 166–71, 173, and 223.

[1] See Brusa, pp. 365–67; Turiello, *Proposte*, pp. 56, 63–65.

[2] A Court of Cassation is a court of last resort, which considers only errors in law in the decisions of inferior tribunals.

[3] These are, conflicts of competence between different courts, or between the courts and the administration; the transfer of suits from one court to another; disciplinary matters; and writs of error in criminal

jurisdiction is still divided among the five Courts of Cassation, which bear the same relation to each other as the highest state courts in America.[1] There is no appeal from one to another, and no one of them feels bound to accept the decisions of the others, or to follow them as precedents. One cannot help thinking that this is an unfortunate condition, because there is nothing that tends more completely to consolidate a people, without crushing out local life, than a uniform administration of justice. Italy has, indeed, a series of codes enacted at various times from 1865 to 1889, and covering civil law, civil procedure, commercial law, criminal law, and criminal procedure; but a code alone will not produce uniformity, because there is still room for differences of interpretation, and in fact the Italian Courts of Cassation often disagree, and there is no tribunal empowered to harmonize their decisions.[2]

The courts and the officials.

As we have already seen in the case of France, the decision of civil and criminal questions forms only a part of the administration of justice in continental Europe, on account of the distinction drawn between public and private law.[3] In order, therefore, to form a correct estimate of the position of

cases, in complaints for violation of election laws, in civil suits against judges, and in questions of taxes and of church property.

[1] For the organization and jurisdiction of the courts, see Brusa, pp. 231–38.

[2] Cf. Speyer, in *Unsere Zeit*, 1879, vol. i. p. 576.

[3] Belgium presents an exception, for there the officials can be sued, and the acts of the government can be reviewed by the courts, as in an Anglo-Saxon country. Cf. Kerchove de Denterghem, *De la Responsabilité des Ministres dans le Droit Public Belge*. For Switzerland, see chap. xi. *infra*.

the courts, we must consider their relation to the government, and their power to determine the legality of the acts of public officers. In Italy the prefects, subprefects, syndics, and their subordinates still enjoy the so-called administrative protection, that is, they cannot be sued or prosecuted for their official conduct without the royal consent.[1] This privilege is generally unpopular, and will no doubt be abolished when the proposed bill on the tenure of office is passed. Meanwhile the benefit of it is claimed more and more frequently, although the permission to proceed appears to be usually granted.[2] But even when this protection has been taken away, the courts will not have as much authority as in England or America. The reader will remember that the officers of the French government formerly possessed a similar privilege, and were deprived of it after the fall of the Second Empire. He will remember also that the change made very little practical difference, because it was held that the ordinary courts had no power to pass on the legality of official acts, such questions being reserved exclusively for the administrative courts. The result of abolishing the privilege will not be precisely the same on the other side of the Alps, because the problem has been worked out on somewhat different lines, a curious attempt having been made to establish a compromise between the English and the French systems.

[1] Law of Feb. 10, 1889, Arts. 8, 139.

[2] Brusa, p. 282; Turiello, *Fatti*, pp. 210–11. The permission to prosecute is not necessary in the case of offenses against the election laws. Law of Feb. 10, 1889, Art. 100 *et seq.*; Brusa, pp. 73, 130, note 1.

The subject of administrative law is, indeed, very confused in Italy, and a few years ago it was in a thoroughly unsatisfactory condition. When the union was formed, several of the component states possessed administrative courts of their own; but in order to produce uniformity, and also with a view of furnishing the rights of the citizen with a better guarantee, an act of March 20, 1865, abolished all these tribunals, and provided that the ordinary courts should have exclusive jurisdiction of all criminal prosecutions, and of all civil cases in which a civil or political right was involved, the Council of State being empowered to decide whether such a right was involved or not.[1] It was not clearly foreseen that this last provision would place in the hands of the government an effective means of tyranny;[2] but such proved to be the case, for the Council of State, composed, as it was at that time, of members who could be removed at pleasure,[3] showed little inclination in disputed cases to recognize that any private rights were involved, and, there being no administrative courts at all, the government had an absolutely free hand as soon as the jurisdiction of the ordinary courts was ousted.[4] The attempt to place the rights of the citizen

Administrative law.

Powers of the ordinary courts.

[1] *Legge sul Contenzioso Administrativo* (March 20, 1865). See, especially, Arts. 1, 2, 3, 13.

[2] Perhaps it would be more correct to say that it was not foreseen how this power would be used for party purposes. Minghetti, *I Partiti Politici*, p. 270 *et seq.*

[3] See *Legge sul Consiglio di Stato* of March 20, 1865, Art. 4.

[4] See Brusa, pp. 212–13, 247; Minghetti, *I Partiti Politici*, p. 147 *et seq.*

more fully under the protection of the ordinary courts than in France had resulted in freeing the officials more completely from all control; for, except when strong political motives come into play, arbitrary conduct on the part of the French officials is restrained by the administrative courts. This state of the law in Italy gave rise to bitter complaints, but it lasted until 1877, when the decision of conflicts, as they are called, or disputes about jurisdiction between the administration and the courts, was transferred to the Court of Cassation at Rome.[1] Still there was no system of administrative justice, and hence, however illegal, and however much in excess of the authority of the official who made it, a decree, ordinance, or other act might be, no redress could be obtained from any tribunal unless it could be shown that an actual legal right was violated.[2] This omission in the judicial system was finally supplied by the statutes of 1889 and 1890, which reorganized the Council of State, created a special section of it to act as an administrative court, and conferred an inferior administrative jurisdiction on the provincial giunta.[3] In order to give the council a considerable degree of independence, it was provided at the same time that the members, whose number is limited, should be retired only on account of sickness and removed only for breach of duty, and in each case only after hearing the opinion of the Council of State itself.[4]

Administrative courts.

[1] Law of March 31, 1877 (Manual of Deps. 1892, p. 374).

[2] Cf. Brusa, pp. 247–50.

[3] These acts, June 2, 1889, and May 1, 1890, are printed in the Manual for 1892, at pp. 357 and 377.

[4] Act of June 2, 1889, Art. 4.

The section which acts as an administrative court enjoys a still greater degree of protection; for it is composed of a president and eight other members selected from among the Councillors of State by the King, and of these eight not less than two nor more than four can be changed in any one year,[1] so that, although the body has not the permanence of a court of law, it is by no means a mere tool of the government. Except in purely political matters, and in certain questions relating to customs duties and conscription, it has power to decide whether the acts of the central or local officers are authorized by law, unless some special tribunal or the ordinary courts have jurisdiction.[2] In brief, therefore, the legality of official acts is determined in civil cases by the ordinary courts when a question of private right, and by the administrative courts when a question only of interest, is involved. The function of the ordinary courts in these cases is, however, strictly limited to the protection of the individual, and does not involve an authoritative declaration of the law, for it is expressly provided that the judgment must be confined to the case at bar, and in that alone is the administration bound by the decision.[3] This principle is deeply rooted in the jurisprudence of the nation, for the Statuto itself declares that the interpretation of the law in such a way as to be universally binding belongs exclusively to the legislative power.[4] The Italian, indeed, has a dread of judge-made law, which is really the most wholesome form of

[1] Act of June 2, 1889, Art. 8.
[2] *Id.*, Art. 24.
[3] Act of March 20, 1865, Art. 4.
[4] Statuto, Art. 73.

legislation, — a prejudice that certainly seems very strange when we consider what a large part of the law of the civilized world, and especially of the law of the Latin races, was developed by means of the edicts of the Roman prætors.

The Italian system of administrative law differs from all others.

It will be observed that the Italian system of administrative law differs from that of every other nation. According to the English principle, the ordinary courts have jurisdiction in all cases, and the very idea of administrative law as a distinct branch of jurisprudence is unknown. In most of the continental countries, on the other hand, all matters involving the legality of official acts are reserved for a special class of courts, which have exclusive cognizance of those questions which constitute the domain of administrative law; but in Italy both classes of tribunals are called upon to decide the same questions, the ordinary courts being specially empowered to protect legal rights.

The judicial system apparently strong, but really weak.

As seen on the statute-book, the Italian judicial system appears to be very good. It seems to provide the individual with more ample remedies, and a better guarantee against arbitrary conduct on the part of the officials, than can be found in most of the countries of continental Europe. But in fact the judiciary is not strong enough to protect the citizen effectually. This is chiefly due, no doubt, to the absence of those deep-seated traditions that are necessary to give the magistrates a controlling authority over public opinion. It is due also to the existence of the five independent

Courts of Cassation, which prevents any one court from having the power that might be acquired by a supreme national tribunal; and indeed it is self-evident that a decentralized judiciary can hardly be expected to restrain a centralized administration. Nor is the protection afforded to the bench satisfactory. The constitution provides that judges, except in the lowest courts, shall be irremovable after three years of service,[1] and by statute they can be retired only on account of illness, and removed only for crime or neglect of duty, and in these cases only with the approval of the Court of Cassation at Rome. But a judge is not protected against a transfer from one judicial post to another of the same rank, and although by royal decree a commission annually appointed by the court at Rome must be consulted before such a transfer can be made, its advice is not binding on the government.[2] The judges are, therefore, by no means entirely independent of the executive, and complaints are often made that they are altogether too much under its control. It is impossible to say how far these complaints are justified,[3] but it is certain that

Insufficient protection of the judges.

[1] Statuto, Art. 69.

[2] Brusa, pp. 277–78. In 1878 this decree was repealed for a time, and one hundred and twenty-two transfers were made in six months. Minghetti, pp. 134–35.

[3] Writing in 1878, Jacini (*I Conservatori*, p. 29) said that, so far, the judiciary had resisted all party pressure, but since that time this does not seem to have been true. See Minghetti, *ubi supra*; Turiello, *Fatti*, p. 316; *Proposte*, pp. 234–35; De Viti di Marco, "The Political Situation in Italy," *Nineteenth Cent.*, Oct., 1895; Pareto, "L'Italie Economique," *Revue des Deux Mondes*, Oct. 15, 1891, *Giornale dei Economisti*, March, 1895, p. 353; Ruiz, *Ann. Amer. Acad. of Pol. Sci.*, Sept., 1895, p. 54;

the judiciary either has not enough power, or does not feel sufficiently free, to protect individuals against an oppressive abuse of political power, especially in local matters. This is true even in tranquil times, while the wholesale resort to martial law by the proclamation of the state of siege during the recent troubles in Sicily and at Carrara shows that the courts are unable to cope with disorder on any large scale.[1]

The judicial system has been dwelt upon here at what may seem an inordinate length because its condition is one of the most important factors in the present political condition of the kingdom.

The church.

The Italians almost wholly Catholic.

There is one institution in Italy which is not strictly a part of the government, but is so closely connected with it, and has so direct an influence on politics, that it cannot be passed over. This is the Catholic church. Within the last quarter of a century every country in central Europe has found itself confronted with the Catholic question, and has been obliged to grapple with it; but the matter has a peculiar importance in Italy. Not because the Italian is fanatical. On the contrary, his intense religious fervor seems to have burned itself out during the Middle Ages, and has left him com-

Wolffson, "Italian Secret Societies," *Contemp. Rev.*, May, 1891; Lord, "Italia non Fara da Se," *Nineteenth Cent.*, March, 1892. The charge that the courts were subject to political influence was made by the Parliamentary committee on the bank scandals in December, 1894.

[1] Contrast with these events the Chicago riots of 1894, where not only the military authorities never superseded the judicial, but where the national troops were called into action solely by means of the United States courts.

paratively indifferent; yet he clings to the church with a tenacity that is out of proportion to his zeal.[1] This is due partly to the fact that he knows no other creed, and partly to his conservative nature, but chiefly, perhaps, to the fact that the ceremonies and rites of the Catholic faith, having been moulded for the most part by his own race, are closely fitted to his temperament, and therefore continue to attract him strongly, especially on the æsthetic side. The nation is almost wholly Catholic, and to-day, as in the past, the church in Italy is assailed, not by heretics, but by her own children.

The doctrine of a free church in a free state.

Cavour proclaimed the doctrine of a free church in a free state; but although the church is more independent of the government than might have been expected, it is impossible to carry the principle out fully in a country where there is only one religious body, and where that body has always been intimately connected with public life. The church could not be independent of the state in Italy in the same sense that it is in America, and this fact has led some of the Italian advocates of the doctrine to misunderstand it completely. They complain, for example, that the actual relation between church and state is based on the idea that the church is a private association instead of a public institution, and lament that the state has surrendered too much its

[1] Sir Charles Dilke, in his *Present Position of European Politics* (pp. 261–62), quotes the saying that the Italians would be a nation of freethinkers if they had ever been known to think, and remarks that although the epigram is unfair, there is a certain measure of truth underlying it.

control over the education of priests,[1] — expressions which amount to a complaint that the church is too free. But, although the principle cannot be applied rigorously in Italy, it has been carried out to a considerable extent. The state has abandoned the right of nomination to ecclesiastical offices, which had existed in some of the former Italian principalities; and the bishops are no longer required to take an oath of allegiance to the King.[2] Moreover, the so-called *exequatur* and *placet*, that is, the requirement of permits from the government for the publication and execution of the acts of ecclesiastical authorities, have been given up.[3] The state has also renounced all control over the seminaries for priests in Rome,[4] and rarely interferes with those elsewhere;[5] and finally the church has been granted freedom of meeting, of publication, and of jurisdiction in spiritual matters.[6] Conversely, the acts of the ecclesiastical authorities have ceased to be privileged. They have no legal force if they are con-

[1] See, for example, Brusa, pp. 426–27, 429.

[2] Act of May 13, 1871, Tit. ii. Art. 15. It has been decided that in the case of the lower clergy the oath was not dispensed with wherever it had been required by earlier laws (Brusa, p. 428); and even the bishops are not entirely independent of the state, for the royal *exequatur* is still required for the enjoyment of their revenues (*Id.*, p. 437). At times these have actually been withheld, notably in 1877. Speyer, in *Unsere Zeit*, 1878, vol. ii. p. 604.

[3] Act of May 13, 1871, Tit. ii. Art. 16.

[4] *Id.*, Tit. i. Art. 13.

[5] Brusa, p. 438.

[6] *Id.*, Tit. ii. Arts. 14, 16, 17. Religious processions outside the churches may be forbidden by the local authorities, if they are liable to interfere with public order or public health. Law of June 30, 1889, Art. 8.

trary to law or violate private rights, and they are not exempt from the provisions of the criminal code.[1]

Treatment of the monastic orders;

A thorny question for the new kingdom was involved in the position of the monastic orders, many of which still held great tracts of land, but had long outlived their usefulness and were felt to be an anachronism. The solution adopted, though almost a necessity, was drastic, and illustrates how far the theory of a free church in a free state was at this time from being a reality. The order of Jesuits was absolutely excluded from the kingdom;[2] and even in the case of the other bodies, which had not aroused such violent antipathy, the government determined, while sparing the existing members, to forbid the enrollment of any new recruits. By the statutes of 1866 and 1867, therefore, all these monastic institutions and most of the benefices without a cure of souls were suppressed, and their property transferred to the state to be employed for the support of religion; but a pension for life was reserved to the present possessors, who were also allowed to remain in their establishments.[3] Every traveler will remember the aged monks in white frocks who may still be seen wandering among the cloisters of the Val d' Ema, near Florence. These are the last representatives of a mighty order that once overshadowed Christendom, and

[1] Act of May 13, 1871, Tit. ii. Art. 17. The Penal Code of 1888 specially punishes abuse of language by the clergy. Brusa, p. 61.

[2] Brusa, p. 56, note 4.

[3] Acts of July 7, 1866, and Aug. 15, 1867. See, also, Brusa, pp. 431–33. By an Act of 1873 these provisions were applied to Rome, but in a modified form. Brusa, *Ib.*

with the spirit of romance which Italy cannot shake off even if she would, they have been allowed to drop away one by one until the monastery becomes silent forever.

and of the endowments of the secular clergy.

The convents were not the only great landowners in the church. Many of the higher secular clergy were also richly endowed. But there was a strong feeling that the soil of the country ought to be controlled by laymen, and that the larger ecclesiastical incomes ought to be reduced. This feeling found its expression in the same statutes of 1866 and 1867, by which all church lands, except those belonging to parishes, those used by bishops and other dignitaries, and buildings actually devoted to worship, were taken by the state and converted into perpetual five per cent. annuities;[1] while all ecclesiastical revenues, not of a parochial nature, were taxed thirty per cent., or in other words partially confiscated.[2]

The position of the Pope.

By far the most difficult question was presented by the papacy. The Holy See had ruled over a territory of considerable size extending across the peninsula from the Mediterranean to the Adriatic. It pretended to trace its rights from a grant made in the fourth century by the Emperor Constantine the Great to Pope Sylvester, and in fact

[1] Act of July 7, 1866, Arts. 11–18.

[2] Act of Aug. 15, 1867, Art. 18. By the Act of July 7, 1866, Art. 31, the revenues of bishops exceeding 10,000 lire are taxed progressively for the benefit of the general fund for religion, the whole excess above 60,000 lire being so taken. But if, on the other hand, the income of a bishop falls below 6,000 lire, it is made up to that sum out of the general fund (Art. 19). Similar taxes for the benefit of the fund are imposed on other ecclesiastical revenues. In the Act of 1873, Rome was more gently treated. Brusa, pp. 432–33.

its dominion was as old and well founded as that of any monarch in Europe. It felt that the sovereignty over its own States — the so-called Temporal Power — was necessary for its independence, and that if the Pope lived in a city subject to another ruler he could not remain entirely free in spiritual matters. But the Italians felt no less strongly that their country would never be a complete nation until it included everything between the Alps and the sea, with Rome as its capital, and this feeling was fully shared by the Romans themselves.

The Papal States annexed by Italy.

The northern and eastern part of the Papal States was annexed to the new Kingdom of Italy at the same time as Naples and Sicily, that is in 1860; but Rome and the country about it was protected by Napoleon III., whose power depended so much on the support of his ultramontane subjects that he could not safely desert the cause of the Pope. Italy chafed under his interference, and waited uneasily until the war with Prussia forced him to recall his troops. Then came the revolution that overturned his throne. An Italian army at once crossed the frontier of the Papal States, and entered Rome on September 20, 1870.

The law of the Papal Guarantees.

The problem before the government was a delicate one, because any appearance of an intention to treat the Pope as an Italian subject would have excited the indignation of the whole Catholic world, and might have led to foreign complications, or even to an armed intervention in favor of the Temporal Power. The cabinet determined, therefore, that

a law fixing definitely the position and privileges of the Holy See should be passed before the seat of government was moved to Rome. Recognizing the peculiar relations of the Pope to other States, the ministers proposed to make this law one of international bearing, so that it would have an effect analogous to that of a treaty, but they yielded to the firm opposition of the Left in the Chamber, and the act was finally passed as a piece of domestic legislation.[1] This is the celebrated Law of the Papal Guarantees, which was enacted in May, 1871, and remains unchanged at the present day. Its object is to insure the freedom of the Pope in the exercise of all his spiritual functions, and for that purpose it surrounds him with most of the privileges of sovereignty. His person is declared sacred and inviolable; assaults or public slander directed against him being punishable like similar offenses against the King. Public officials in the exercise of their duties are forbidden to enter his palace or its grounds; and the same exemption applies to the place of meeting of a Conclave or Œcumenic Council. Searching any papal offices that have solely spiritual functions, or confiscating papers therefrom, is prohibited, and it is provided that priests shall not be punished or questioned for publishing, in the course of their duties, the acts of the spiritual authority of the Holy See. The Pope is accorded the honors of a sovereign prince, and persons accredited to him enjoy all the immunities of diplomatic agents. He is guaranteed free intercourse with the bishops,

[1] Petruccelli della Gattina, *Storia d' Italia*, pp. 93–94.

and indeed with the whole Catholic world, messages sent in his name being placed on the same footing as those of foreign governments. Moreover he is granted a perpetual annuity of over six hundred thousand dollars, which is entered in the great book of state debts, and is free from all tax. This grant he has always refused to accept, and every year it is returned to the treasury. Finally he is left in absolute possession of the palaces of the Vatican, the Lateran, and Castel Gandolfo, with all their buildings, gardens, and lands, free of taxes.[1]

Refusal of the Pope to accept the situation.

It will be observed that this law, — which appears, by the way, to have been faithfully carried out by the Italian government, — assures to the Pope absolute freedom in the exercise of his functions as head of the Catholic church, and guards him against all personal disrespect. Nevertheless neither Pius IX. nor his successor Leo XIII. has been willing to accept it; and indeed they could not have done so without acknowledging the authority of the government by which it was enacted, and this they have never been willing to do. They have not ceased for a moment to protest against the destruction of the Temporal Power; in fact, they have avoided everything that could possibly be construed as a recognition of the Kingdom of Italy. The Pope has affected to consider himself a prisoner, and since the

[1] This is the law of May 13, 1871, several sections of which have already been cited. There is a criticism of the legal situation of the Holy See from a papal standpoint by Comte Rostworowski, entitled "La Situation Internationale du Saint-Siège," in the *Ann. de l'Ecole Libre des Sciences Politiques*, 1892, p. 102.

royal cannon opened a breach in the Roman walls at the Porta Pia, he has scarcely placed his foot outside the grounds of the Vatican.[1] He has even refused to allow the clerical party to vote for deputies to Parliament, on the ground that this would involve a tacit acknowledgment of the legality of the existing government; and thus a large portion of the Italian people takes no part in national politics, although the same men vote freely and sometimes win victories at municipal elections. Such a condition of things is very unfortunate, for it tends to create a hostility between religion and patriotism, and makes it very hard for a man to be faithful both to his church and his country. If the Italians had any liking for other sects, these would no doubt increase rapidly; but as religion and Catholicism are synonymous terms in Italy, the antagonism between church and state merely stimulates skepticism and indifference.

Solution of the papal question difficult for the Vatican.

It is not easy to see how the papal question will finally be solved. The present Pontiff is a man of great tact, and with marvelous dexterity he has changed the policy of the Vatican so as to bring it into harmony with the nineteenth century. He made a peace with Bismarck by which the Iron Chancellor virtually acknowledged defeat; and by his conciliatory tone towards the French Republic he seems to be in a fair way to checkmate the Radicals in France with their hatred of the church. Yet even Leo XIII. has not been able to come to terms with Italy. One thing is clear. Italy will

[1] Until 1888 he did not even appear in St. Peter's.

never give up Rome, nor is there the slightest probability that any foreign country will try to force her to do so; and, indeed, it is said that even in the Vatican the restoration of the Temporal Power is considered hopeless.[1] To the outside observer it hardly appears desirable in the interest of the papacy itself, because with the loss of its secular functions, the Holy See has gained enormously in ecclesiastical authority. This is not an accident, for the destruction of the Temporal Power is one step in the long movement for the separation of church and state, which during the last hundred years has been breaking the local and national ties of the clergy in the different countries, and has thus made the Catholic church more cosmopolitan, more centralized, and more dependent on its spiritual head. Such, however, is not the view of many ardent Catholics, who are so dissatisfied with the present situation that a departure of the Pope from Rome has often been suggested; but although on more than one occasion a removal has been said to be imminent, it is in the highest degree

[1] In an answer ("Italy, France, and the Papacy," *Contemp. Rev.*, Aug., 1891) to an article entitled "The Savoy Dynasty, the Pope, and the Republic," by an anonymous writer (*Contemp. Rev.*, Apr., 1891), Crispi speaks of the possibility of a French intervention in favor of the Temporal Power as a real danger. One cannot help feeling that this must have been said rather for its effect than from conviction. In a previous answer to the same article ("Italy and France," *Contemp. Rev.*, June, 1891), Crispi makes the interesting statement that even in Rome only the highest church dignitaries want the Temporal Power, while over the rest of Italy the clergy never were papal, and are not so now. In a later number of the same *Review* the Triple Alliance and the papal question are further discussed by Emile de Laveleye ("The Foreign Policy of Italy," *Contemp. Rev.*, Feb., 1892.)

unlikely, for the Holy See could not get from any other state in whose territory it might settle terms more favorable than those accorded by the Law of the Papal Guarantees, and even if it should accept a grant of complete sovereignty over some island or small tract of land, the loss in prestige from the change of residence would be incalculable. The veneration of the past still clings to Rome, and although the splendor of the Vatican is gone, the Pope bereft of his Temporal Power wields a greater spiritual influence than he has had for centuries.

CHAPTER IV.

ITALY: PARTIES.

In the last chapter we examined the structure of the Italian government; the organization of the two Chambers, and their relation to the King and his ministers; the method of administration and local government; the judicial system; and finally the position of the Catholic Church. Let us now inquire how the government actually works, especially in regard to the nature and activity of political parties.

The actual working of the Italian government.

For this purpose it may be instructive to take a brief survey of the political history of the kingdom.[1] Cavour, who shaped the destiny of Italy, was not a party man. He was decidedly independent in politics, and fought for his own plan without a great deal of regard to party affiliations. In general he may be said to have relied on the support of the Moderates or Centre, but as the greatness of his statesmanship came to be understood, opposition to him faded away so thoroughly that in the first Italian Parliament (elected in January, 1861, after the whole country except Rome and Venice had been

The political history of the kingdom.

Position of Cavour.

[1] Cf. Jacini, *I Conservatori e l' Evoluzione Naturale dei Partiti*; Bonfadini, "I Partiti Parlamentari," *Nuova Antologia*, Feb. 15, 1894; Petruccelli della Gattina, *Storia d' Italia*.

united), his supporters numbered four hundred and seven, while the opposition consisted of only thirty-four Radicals on the Left and two Clericals on the Right.

At his death the parties of the Right and Left are formed.

Before the end of the following June Cavour was dead, and his followers, who did not really form a political party, and had been held together only by his commanding influence, soon fell apart. They separated into a Right and a Left, of which the Right believed in moving slowly and cautiously towards the completion of Italian unity, waiting till the turn of European politics should give a favorable chance to take a decisive step, while the Left was impatient, anxious to force the issue, and ready to follow the popular impulse. Twice only (in 1862 and 1867) the Left under Rattazzi came to power, and both times its policy, after a short trial, proved a failure.[1] On each occasion Garibaldi, with the connivance of the ministers, as it was supposed, invaded the papal territory at the head of a band of volunteers, only to find his expedition checked by the interference of Napoleon III. In 1862 the Italian government, to prevent a serious collision with France, arrested him at Aspromonte, and in 1867 his forces were dispersed by French troops at Mentana. On each occasion, moreover, a fear that Italy would become embroiled in a quarrel with the Emperor quickly replaced the Right in office. The Left having shown itself incapable of completing the unity of the nation, the Right remained in power until this work was ended

Government by the Right.

[1] In the first of these cases the cabinet did not belong purely to the Left, Sella, a leader of the Right, being a member of it.

by the annexation of Rome in 1871; and even then there remained a task for it to accomplish. The making of Italy had been very expensive, and the government had spared no cost in the operation. It had spent money lavishly, not only in war, but also in creating an army and navy and in railroad building, and the result was a large debt and an annual deficit in the finances. The Right now set itself to work to bring about an equilibrium in the budget, and this it succeeded in doing in 1876. Then its work was ended and it fell. The Right had, in fact, been kept in power during the last few years only by a desire to see the equilibrium established; for while upright in its administration, it had been rigid and autocratic, and the crushing weight of the taxes, together with the disappointment of the people who had expected the millennium to come with the union of Italy, had made it so generally unpopular that the elections, held shortly after its fall, resulted in an overwhelming victory for its opponents.

Fall of the Right in 1876.

The transfer of power to the Left in 1876 marks a turning-point in Italian political history. Not that any decided change of policy took place, for although during the time the Right was in office the Left had been telling the nation how much better it would govern if it had a chance, and had been declaiming about liberty and a reduction of taxes, it found itself compelled on assuming power to follow much the same course as its predecessor. After some years it did, indeed, extend the electoral franchise, and abolish the unpopular grist tax, without, however, much

Effect of the transfer of power to the Left.

lightening the general burden of taxation; but it continued to use when in office the same arbitrary powers it had condemned in opposition, and showed as a rule no greater tenderness for the liberty of the individual than the Right had done before. In short, the Left which proclaimed itself liberal proved to be quite as conservative as its rival. The real change that took place in 1876 was in the character of the parties themselves, rather than in the policy pursued, and the result was not so much a new departure as an exaggeration of the existing state of things. The process to which I refer is the breaking of the parties into groups. After the death of Cavour two opposing parties had been formed, but even during the struggle for Venice and Rome, when these parties were divided by a real difference of opinion, neither of them was solidly united within itself, while sundry lesser groups, which sometimes supported the government of the Right and sometimes opposed it, formed and dissolved with bewildering rapidity. In fact, the parties were badly disintegrated. On the Right, for example, the harmony between the two most prominent leaders, Sella and Minghetti, was so slight that they were never members of the same cabinet, and indeed the chiefs of the party frequently helped to upset each other's ministries. The Right held office almost continuously for fifteen years, and yet its cabinets were constantly overthrown to be replaced by others from the same side of the Chamber.[1] This condition of politics was increased by the change

[1] In one instance (in 1867) Depretis, a leader of the Left, held for a short time a portfolio in a ministry of the Right.

of parties, for the Left had no programme and never acted as a united party after it came to power in 1876. It was merely a collection of groups whose members were held together by personal attachment to rival chiefs, sometimes allied and sometimes in open hostility to each other, — a state of things which became more and more marked as time went on. The personal dependence and mutual assistance between the chief and his followers, the relation, in short, of patron and client in political life, was an innovation that came in, at least in its most virulent form, with the advent to power of the Left. It started in the south from causes that I shall point out later, and spreading through all grades of politics, local and national, it has honeycombed public life in Italy. The Right, indeed, had filled the offices, and especially those of the prefects, with its own followers, but its use of the authority of the state to reward political service does not seem to have gone much further. The Left, on the other hand, used the immense power of the government in almost every conceivable direction for the private advantage of deputies who supported the cabinet, or rather for that of their local patrons, and hence the prefects and other government officials became subject to the influence and control of the deputies as they had never been before.[1]

First cabinet of Depretis.

When the long supremacy of the Right came to an end, Rattazzi, the former leader of the Left, had died without leaving a successor. His

[1] For a strong statement of the extent to which the parties lost all principles and were held together only by material interests, see Pareto, "L'Italie Economique," *Revue des Deux Mondes*, Oct. 15, 1891.

authority had become divided among a number of chiefs, most of them more radical than himself. All of these men had, indeed, begun life as followers of Mazzini, whose revolutionary temper and republican principles helped very much to break down the old order of things, but did little or nothing towards building up anything in its place. With the good sense, however, that is characteristic of Italians, the leaders of the Left accepted loyally the constitutional monarchy after it had been firmly established, and except for a few extremists all the public men abandoned their republican doctrines. The formation of the first cabinet of the Left was intrusted to Depretis, the leader of the most moderate group in the party. He took the position of President of the Council or Prime Minister, and distributed the other portfolios among a number of different groups, the most important appointment being that of Nicotera as Minister of the Interior. Nicotera was strongly impressed with the necessity of maintaining order, and especially of suppressing brigandage and destroying the power of the Camorra in Naples and the Mafia in Sicily. In this he was to a great extent successful, but as the means he used were autocratic and not always legal, he became thoroughly unpopular; and when in December, 1877, he was accused of violating the privacy of telegrams, the indignation of the Chamber rose to such a height that a hostile order of the day was voted, and the ministry resigned. Depretis then formed another cabinet, in which the most significant change was the substitution of Crispi for Nicotera, the other ministers

Nicotera's autocratic policy and his fall.

remaining very nearly the same as before. The new cabinet had, however, a short life, for Crispi, who was expected to add to its strength, was found to have more than one wife, and was forced to retire on March 6, 1878, the whole cabinet following a few days later.

Depretis-Crispi ministry.

The final cause of the resignation of the ministry was the choice as President of the Chamber of Deputies of Cairoli, who had for some time been so bitterly hostile to Depretis that his election was looked upon as equivalent to a vote of want of confidence. The King, therefore, intrusted Cairoli with the formation of a cabinet. Now, Cairoli was the leader of the most radical part of the Left that was loyal to the monarchy, and yet he gave three portfolios to members of the Right, — a fact which shows how completely the parties had ceased to stand for any definite principles. The combination was all the more unnatural because the Minister of the Interior, Zanardelli, was the only prominent leader who had a sincere faith in the doctrines of personal liberty which the Left had always preached. He had a great respect for the freedom of the citizen, and believed in a strict construction of the authority of the government in matters of police; and, what was far more unusual, he tried to carry its theories into practice. The result was an outbreak of lawlessness and political agitation in various parts of the country, followed by dissensions in the cabinet, and the resignation of the ministers belonging to the Right. The disorder in the country increased, brigandage revived, and

Cairoli's first cabinet.

Zanardelli's leniency and fall.

complaints were loud of insufficient protection to person and property, until finally a bomb was thrown into a crowd in Florence, and an attempt was made at Naples to murder the King. The knife of the assassin was warded off by the Prime Minister himself, and, as an Italian historian has remarked, the stroke killed not the King, but the cabinet.[1] The ministers were interpellated in the Chamber from both Right and Left, and were heavily beaten on an order of the day in December, 1878.

Significance of the contrast between the policies of Nicotera and Zanardelli.

The contrast between the policies of Nicotera and Zanardelli is instructive, as showing how little unity of opinion there is in the political parties in Italy, and how the course of the government depends, not on any principles of the party in power, but on the personal views of the ministers. Nicotera, who held the portfolio of the Interior in the first cabinet of the Left, in his efforts to suppress disorder, resorted to arbitrary repressive measures, and stretched the police system to the utmost; while Zanardelli, who also belonged to the Left, and occupied the same position a few months later, tried, on the contrary, to leave to the citizen the largest possible amount of freedom. The attitude of these two men furnishes also an example of the lack of harmony in Italian cabinets, and illustrates the way in which each minister sometimes directs his own department without regard to the opinions of his colleagues; for Zanardelli was himself a member of the very cabinet in which Nicotera was Minister of the Interior.

[1] Petruccelli della Gattina, *Storia d' Italia*, p. 345.

After the defeat of the Cairoli-Zanardelli ministry, Depretis again came into power at the head of a cabinet from the Left, which contained, however, few men of note, and was defeated in the following July (1879) on a question of taxation, the Right, and most of the leaders of the Left, taking part against it. It was then the turn of Cairoli, who once more formed a ministry, but this time abandoned Zanardelli and his principles. The new ministers were almost all men of secondary importance, and the cabinet lasted only until November, when Cairoli, finding his position growing weaker and weaker, offered to make a coalition with Depretis. Of course, such an alliance could not extinguish the rivalry which it smothered, but the crafty old Depretis, knowing that it would not be long before he could get rid of his colleague, accepted the offer, and took the portfolio of the Interior. The fact that these two men, who for a couple of years had been constantly opposed to each other and had been alternately at the head of the state, could form a coalition of this kind proves how completely Italian politics had become a question of persons instead of principles. Even in their personal qualities the men were very different. Cairoli was highly respected for his character, but he was by no means a statesman, and still less a politician, while Depretis was a manipulator of marvelous dexterity, and by his tact and skill succeeded, in spite of the uncertainties of Italian parliamentary warfare, in keeping

Third cabinet of Depretis.

Second cabinet of Cairoli.

The Cairoli-Depretis ministry.

himself in office all the rest of his life.[1] The new cabinet had by no means a compact majority in Parliament, and more than once it was defeated on a vote in the Chamber, but owing to the weakness of its adversaries, and a fear on the part of the Left that if it were overthrown the next cabinet would be formed from the Right, it managed to preserve its existence for eighteen months.

At last the opportunity for which Depretis had been waiting arrived. Cairoli was Minister for Foreign Affairs, and in May, 1881, the indignation produced by the French annexation of Tunis compelled him to resign. Depretis then became President of the Council, and held the place without a break until his death on July 27, 1887. This does not mean that the same ministers remained in office all that time. On the contrary, Depretis had no less than five separate cabinets, for instead of retiring from office and leading an opposition when his government was defeated in the Chamber, he made what was called a *Rimpasto;* that is, he dropped those of his colleagues who, by giving offense or making themselves unpopular, had become a drag upon him, and replaced them by new men. Nor did he confine himself in the choice of ministers to the members of one party, but finding that the country was getting over its dislike of the Right, which was gaining in strength at the expense of the Left, he made a coalition with it in May, 1883, and admitted one of its members to the cabinet. This change of front, called the *Transformismo,* involved a

Successive cabinets of Depretis.

[1] *The Leisure Hour* for 1891 (pp. 160, 235) gives an interesting description of the recent Italian leaders.

quarrel with all the other five leaders of the Left, who formed a hostile alliance known as the Pentarchy, and complained bitterly that Depretis had deserted his old friends.[1] There was now, in fact, little or no difference in political principles between the parties, and the ministries were fought for on the basis "that they should take who have the power, and they should keep who can." Under these circumstances, with no strong party organizations to direct and limit the path of ambition, politics were sure to be in an unstable condition in which no combination could long endure. It was not a great while, therefore, before the coalition with the Right began to show itself less strong than had been hoped. Rents appeared in the government majority, and although one portfolio was almost always held by a member of the Right,[2] a larger and larger section of that party became hostile to the ministry.

At last, after a couple more *Rimpasti*, the position of the government became so weak that Depretis again changed his policy, and abandoning the Right, effected a reconciliation with two members of the Pentarchy, — Crispi and Zanardelli, — to whom he gave seats in the cabinet. This was in April, 1887, only three months before his death.

Unparliamentary tactics of Depretis.

Depretis had succeeded, thanks to his own subtle tactics and to the dissensions of his rivals, in keeping himself at the head of the state for six years. But he did it by an entire distor-

[1] They were Cairoli, Crispi, Nicotera, Zanardelli, and Baccarini.

[2] It is characteristic of the group system of parties that this member was never one of the leaders of the party.

tion of the nature of parliamentary government, for instead of being held to account as the leader of a united cabinet, he had made himself the permanent chief of a corps of ministers who were liable to be overthrown separately by the Chamber. He had virtually substituted himself for the King as the irresponsible head of the state, and at the same time he had deprived the cabinet of collective responsibility. To such an extent was this true that he not only remained continually in office himself, but he always kept Magliani, one of the ablest of Italian financiers, as his Minister of the Treasury. The course of Depretis would clearly have been out of the question if he had stood for any policy, or indeed if the parties in the Chamber had had any real programmes.[1] It was rendered possible only by the fact that there had ceased to be any essential difference between the principles of the various groups, so that the struggles in the Chamber were chiefly based on personal ambition; and it is worthy of note that until he admitted Crispi to the cabinet in 1887, he always retained in his own hands the Department of the Interior, which was the main reservoir of patronage.

The rule of Crispi.

Crispi was the natural successor of Depretis, and he tried to carry on the same practice of remodeling his cabinet, when he met with a hostile vote. For a time this worked well, and he might have continued in office indefinitely had he not been made of very different stuff from his predecessor; but he is a man of strong personality, who cannot be colorless,

[1] Cf. Dupriez, *Les Ministres*, vol. i. p. 304.

or help identifying himself with his administration. At first he seemed to be omnipotent, but his enormous expenditures which entailed a heavy deficit in the budget, the commercial quarrel with France, and his own uncontrollable temper, caused his overthrow on January 31, 1891. His fall illustrates how little the support of a minister in Italy is due to the policy he pursues, for at the general elections in November, 1890, the course of the government seemed to be almost universally approved. The Extreme Left, or Radicals, alone conducted an active campaign against the cabinet, whose supporters carried about four hundred out of the five hundred and eight seats in the Chamber. Yet in less than three months Crispi lost his majority, and after his defeat only a few deputies remained faithful to him.

The ministries of Rudini and Giolitti.

Crispi was succeeded by a coalition between the opposition of the Right and Left, whose leading representatives in the cabinet were the Marchese de Rudini and Nicotera,[1] but this ministry lived only a little more than a year, and was followed in May, 1892, by a cabinet containing none of the distinguished party leaders. It is, indeed, a noticeable fact that Italian politics at the present day do not seem to produce statesmen of the calibre of those who developed during the struggle for national existence.

The new cabinet was opposed by a coalition of the Right and the Extreme Left, and was supported by the

[1] Cf. "The Italian Ministry," *Westminster Rev.*, Sept., 1891 ; Giacometti, "Cinq Mois de Politique Italienne," *Revue des Deux Mondes*, Sept. 15, 1891.

groups of the Centre and Left, both Crispi and Zanardelli giving it their coöperation at the outset. The majority was, however, insecure, and at the close of the session Parliament was dissolved. Official pressure was freely used in the campaign; two thirds of the prefects were removed or transferred to other provinces; and as is almost always the case in Italy, the government won a victory at the polls. In spite of the fact that Crispi withdrew his support, the cabinet obtained a vote of confidence by a large majority; but the prevailing commercial distress was rapidly bringing the country into a condition which required a far stronger hand than that of Giolitti. The state of the finances was deplorable. Gold and silver had almost gone out of circulation, and the budget showed a huge deficit, which the government could not fill because it was unable to induce the deputies to consent to the economies it proposed. Nothing was left but an increase of taxation, and when Giolitti proposed this the peasants in Sicily, who were already overburdened, broke out in riot and wrecked the offices of the tax-gatherers. Meanwhile the reputation of the cabinet had been stained by the discovery of the fraudulent mismanagement of the Banca Romana, in which public men were manifestly implicated. After resisting as long as he could, Giolitti finally consented to the appointment of a parliamentary committee of inquiry, whose report, laid before the Chamber at the opening of the session on November 23, 1893, brought his career to an end. It stated that most of the papers seized at the house of the governor of the bank had been put out of sight

by the government; and the ministers, without challenging a vote of confidence, laid their resignation before the King.

Crispi's restoration and fall.

Crispi, as the only man able to face the situation, returned to power. He proclaimed martial law in Sicily, suppressed by force the insurrection which had assumed alarming dimensions, and throughout the kingdom his measures for the maintenance of order, if of doubtful legality, were energetic and effective. His treatment of the Parliament was no less vigorous. The cabinet relied for support chiefly on the Centre and the Left, that is, in the main, on the same elements that had followed the previous ministry; but as the opposition contained not only the Extreme Left and part of the Right, but also the groups of Giolitti and Zanardelli, the majority was exceedingly precarious.[1] By clever management, however, Crispi was able to keep the Chamber under his control for more than a year. At last, in December, 1894, Giolitti caused an explosion by producing the papers he had concealed, which showed that Crispi himself had received money from the Banca Romana.

During the next five months the cabinet was at war with the majority in the Chamber, and parliamentary government was virtually suspended. Parliament was prorogued and taxes were decreed without legislative sanction; but no universal storm of indignation fol-

[1] Bonghi ("Gli Ultimi Fatti Parlamentari," *Nuova Antologia*, Jan. 1, 1895) remarks that apart from the Extreme Left all the deputies ought properly to be classed as belonging to the Centre, so completely have the parties lost all political significance.

lowed, because the conduct of the deputies for many years had not been such as to awaken enthusiasm or allow them to play the part of veritable champions of popular rights, while to the middle classes Crispi seemed the only protection against anarchy. When, therefore, a dissolution was ordered and elections were held in the following May, the government obtained a majority and the parliamentary forms were resumed.

Crispi was playing a game which could be justified only by necessity, and was bound to be severely condemned in case of any lack of success. For a time, indeed, his success appeared to be complete. Open disorder had been suppressed, and he had acquired the control of Parliament; but in 1896 trouble came from an unexpected quarter. Italy had been investing in colonial speculation an amount of men and money she could ill afford to lose, and that without any adequate return. The post on the Red Sea had been a constant source of expense, and at last it brought her into a quarrel with the King of Abyssinia, who routed, on March 1, the small Italian army sent against him. When news of the disaster reached Italy the excitement became intense; riots occurred in several places, and Crispi was the object of such violent attack that he was forced to resign without waiting for the judgment of the Chamber. He has been succeeded by a cabinet under Rudini, which as usual has begun by talking economy.

Comparison of parties in Italy and France.

The story of the political life of Italy since she became a kingdom shows how far the English parliamentary system has been from producing the same results as in its native land. Instead

of two great parties which are alternately in power and in opposition, we find, as in France, a number of groups, sometimes united and sometimes hostile to each other, ever forming new combinations, until it becomes almost impossible to follow their evolutions.[1] The resemblance between the condition of parties in France and in Italy is indeed so striking, and at the same time the difference between them is so great, that a comparison of the two is very instructive. In the first place we find in both countries a large body of irreconcilables who in each case are Clericals; but while in France the reactionaries sit in the Chamber, and by their presence force the two wings of the Republicans to maintain a precarious alliance, in Italy the partisans of the Holy See refuse to vote for deputies, and have no seats in the Chamber.

The Clericals and their influence on parties.

The absence of the irreconcilables from the Italian Parliament saves that body from a great deal of bitterness, and allows the members to group themselves more freely, yet their existence in the country has a marked effect on the condition of parties, for the Clericals are neither few nor passive. They have a large number of supporters who take an active part in municipal elections, and hence there is a real opposition in the state, although it finds no place in Parliament. The people are separated into two factions, the adherents of the

[1] Jacini, as early as 1867, wrote: "*I ministri Italiani sono una fantasmagoria di uomini che vanno e vengono, come proteiforme giuoco d' influenze, di persone, di gruppi, di coalizione; nascono e muoiono senza indovinare il perche*" (quoted by Petruccelli della Gattina, *Storia d' Italia*, p. 194).

Tiara and of the Crown; and this antagonism, by diminishing the apparent importance of any other issue, tends to prevent it from forming a basis for a division into two great parties. During the time that elapsed after Italy had become a nation, and before Venice and Rome had been won, political passion ran high over the policy to be pursued in obtaining those provinces, and the deputies were pretty sharply divided into two opposing sections. But with the taking of Rome in 1870 the conflict with the church became more acute, and since that time there has arisen no question great enough to absorb public interest and cast the religious quarrel into the shade. Moreover the Clericals are the real Conservatives in the state, and their absence from Parliament allows the supporters of the monarchy, who are really all Liberals, to break up into groups instead of forming a single party.[1] To use an antithesis, it may fairly be said that in France the presence of the irreconcilables in the Chamber forces together men whose political principles are essentially different, while in Italy their absence fosters divisions among members whose principles are really very much the same.

Committees and interpellations.

In the chapter on France several details of the political machinery were pointed out that helped to break up the parties by diminishing the authority and stability of the cabinets, and among the most important of these were the system of committees in the Chambers, and the practice of inter-

[1] Dupriez, *Les Ministres*, vol. i. p. 302; Speyer, in *Unsere Zeit*, 1879, vol. i. pp. 579–80; Jacini (*I Conservatori*, pp. 24–25) says that what Italy needs in order to get rid of personal politics is a conservative party.

pellations.[1] Both of these peculiarities are to be found in Italy, but they have been so modified as to be somewhat less repugnant to the parliamentary system than in France.

The committee system better in Italy than in France.

The Chambers are divided in the same way by lot into sections, called *Uffici*,[2] which elect most of the committees, but in each branch of Parliament the committee on the budget, which is the most important of all, is chosen directly by the Chamber itself.[3] This gives the cabinet a chance to exert a good deal of influence over its composition, and in fact its election has been considered of late years a regular test of the strength of the government. The result is that the choice of a hostile committee is sometimes regarded as a vote of want of confidence;[4] but if, on the other hand, the ministers

[1] The third institution that was mentioned in the chapters on France as tending to break the parties into groups, namely, the requirement of an absolute majority for the election of the deputies, is not discussed here, because it did not exist in Italy during the ten years from 1882 to 1892 when the *Scrutinio di Lista* was in force. A majority was formerly required, but in 1882 a plurality was substituted. (See Brusa, p. 132, and see Art. 74 of the Act of 1882.) By the Act of June 28, 1892 (Art. I.), the necessity of a majority vote was restored, and of course it tends as in France to encourage the various groups to present separate candidates at the first ballot, knowing that they can combine at the second if they want to do so.

[2] There are nine of these in the Chamber of Deputies, and five in the Senate, and they are renewed every two months. Rules of the Chamber of Deputies, Arts. 18–21; Rules of the Senate, Arts. 14–22.

[3] Rules of the Senate, Art. 23, of the Deputies, Art. 13. The Chamber of Deputies also elects directly the committees on petitions, and on decrees registered by compulsion by the Corte dei Conti, while the committees on elections and on rules are appointed by the President of the Chamber. Rules of the Deputies, Arts. 12, 13.

[4] Brusa, p. 156, note 2. The whole committee is not chosen from any one party, but minorities are proportionately represented. Brusa, p. 146.

succeed in getting their partisans elected, they are in some measure relieved from the labor of wrangling with a committee not in sympathy with their views. They are a little better able than in France to take their stand on a budget prepared by themselves, instead of being obliged to submit to all the amendments and distortions suggested by an independent or unfriendly set of committee-men. The practice is by no means a perfect one, and does not prevent the Chamber from constantly forcing on the ministers an increase of appropriations;[1] but its good effects are seen in the fact that the government is rarely upset on the budget,[2] although the enormous size of the expenditures compared with the wealth of the country renders the finances of Italy very difficult to manage. They are shown perhaps even more strongly by the fact that the eminent financier Magliani was able to remain at the head of the treasury for nine consecutive years, whereas in

[1] See Brusa, p. 156, note 1; Dupriez, vol. i. pp. 318–19. Marco Besso, in the *Nuova Antologia* ("Megalomania e Micromania," Feb. 1, 1894), remarks that the Parliament is the open enemy of taxes and the secret enemy of economies.

[2] See Brusa, p. 156, note 2. Dupriez (vol. i. p. 328) says that since 1849 the disagreements between the government and the Chamber which have caused cabinet crises have been exclusively on financial questions. This statement seems to be erroneous. It is by no means easy in every case to assign a single definite cause for the fall of a ministry, because the occasion for a hostile vote in the Chamber may be very different from the real cause. I have tried, however, to classify the cabinet crises from its death of Cavour in 1861, through May, 1896, and leaving out of account seven changes of ministry which were not directly brought about by the action of the Chamber at all, I find that out of eighteen cases in which a cabinet has resigned in consequence of a vote of that body, only six arose out of financial matters, and with at least half of these the committee on the budget had no connection.

France the ministers of finance have constantly found the position untenable.[1] A recent authority on parliamentary government, and one of the few writers who understand the importance of the committee system, is very severe in his strictures on the Italian committees.[2] He remarks that the ministers take no part in their debates;[3] that the committees themselves are by no means always friendly to the cabinet, and not being restrained by party discipline, sometimes amend the government proposals radically, sometimes delay their report for the sake of defeating a measure, and sometimes even bring in a bill based on diametrically opposite principles. He says that the reporter of the committee is less a helper than a rival of the ministers, and he adds that in the case of the budget the cabinet can rarely combat openly the decisions of the committee, but is often obliged to accept a compromise. These criticisms are, no doubt, perfectly just, and they illustrate forcibly the entire inconsistency with the parliamentary form of government of any committees that are not under the control of the cabinet;[4] but it does not follow that the Italian method of selecting the committee on the budget is not a slight improvement upon the French. Within a few years Italy has made

[1] Rouvier in France was at the head of the finances from March, 1890, to January, 1893, and this was an unusually long period.

[2] Dupriez, *Les Ministres*, vol. i. p. 309 *et seq.* See, also, Minghetti, *I Partiti Politici*, p. 322.

[3] On this point see, also, Brusa, p. 146, note 2.

[4] On visiting the Chamber of Deputies in 1890, the writer was struck by the way the place reserved for the committee symbolized its political position. The committee whose report is debated occupies a special bench facing that of the ministers.

a still more important modification of her procedure.[1] In 1888, after a long struggle, the Chamber of Deputies introduced experimentally a process of three readings, whereby the Chamber can, if it desires, order a general debate and vote on a bill before it is referred to a committee, and in that case, the main principle of the measure having been approved by the Chamber, the discussion in the committee is limited to a consideration of the details. When this procedure is followed the committee is elected by the Uffici, unless the Chamber prefers to choose the members directly, or to request the President to appoint them. The process has the additional advantage of preventing the committees from smothering bills by neglecting to take any action upon them, for it is provided that in case a committee does not report within thirty days, the government or any member of the Chamber may move that a day be fixed for the second reading of the bill.[2] This was, indeed, Crispi's chief motive in urging the change of system. The new procedure can hardly fail to increase the authority of the cabinet by diminishing the power of the committees.[3]

The interpellations are better managed.

The practice of interpellations, that is of questions addressed to the ministers and followed by a debate and vote on an order of the day expressing the opinion of the Chamber, also prevails in Italy. It is, however, better arranged than in France, for although a motion can be made imme-

[1] Rules of the Deputies, Arts. 53–62; Brusa, p. 147, note 1.

[2] Rules of the Deputies, Art. 58.

[3] Dupriez is clearly of this opinion, vol. i. p. 308.

diately after the minister has answered the interpellation, the debate and vote, instead of taking place at once while the Chamber is in a state of excitement, is postponed to a future day, so that the members have time to cool down and consider soberly whether they wish to turn out the cabinet or not.[1]

Parliamentary procedure better, but the political material worse than in France.

These modifications in the system of committees and interpellations have not made the Italian cabinets much more permanent than the French, but have endowed them with a somewhat longer term of life.[2] They appear also to have given them a little more dignity and independence in the face of the deputies, and made them less the sport of excitement or caprice. But while the procedure in the Chamber accords better with cabinet responsibility in Italy than in France, the political material is less adapted to the formation of

[1] Rules of the Deputies, Arts. 104–8. Dupriez (vol. i. pp. 322–24) regards this as a useless waste of time, and goes so far as to regret that in the case of simple questions the Chamber has not power to cut short the dialogue between the deputy and the minister by an order of the day. He points out (vol. ii. p. 441) that interpellations are more numerous and waste more time in Italy than in France, and he attributes their quantity to the number of groups into which the Chamber is divided. (Vol. i. p. 324.) It is curious that a man of his keen insight should consider the waste of time as the chief evil of the system, and should not see that the interpellations help to weaken the cabinet and keep the groups alive. His description of the long dialogues over simple questions conveys, by the way, a wrong impression; for the Rules of the Chamber provide (Art. 105) that the answer of the minister shall give rise neither to a declaration on the part of the deputy, nor to a debate.

[2] From Cavour's death in June, 1861, to June, 1896, there have been thirty-one different cabinets, whose average duration has therefore been over thirteen months and a half; while the average life of French cabinets has been less than eight months and a half.

great parties and hence to the parliamentary form of government. There is a marked lack of ability to coöperate for public ends in matters of national importance, and this accounts for the fact that the Italian ministries, in spite of their greater stability, have been, as a rule, even less united within themselves than the French. Now consider what this means. The theory of the parliamentary system is based upon the idea that the government of the country is intrusted to a committee, the members of which are jointly responsible to the popular Chamber for the whole conduct of the administration, so that a hostile vote on any question is a condemnation of each and all of them. Hence the theory implies that the ministers must cling to each other and present to the Chamber a single front and a consistent policy. This is the reason for the secrecy of cabinet consultations, for if the differences between the ministers were exposed to public view, it would be impossible for them to maintain an appearance of harmony. It has already been pointed out that such a system tends normally to divide Parliament into two opposing parties, because so long as the ministers act in concert and stand or fall together, the members of the Chamber cannot support one of them and oppose another, but must follow their lead absolutely, or turn them all out. Under normal conditions, therefore, Parliament must be sharply divided into the supporters of the cabinet and the opposition; and unless there is some disturbing element, the members of each of these sections, by constantly working together for a single end, tend to become consolidated

The lack of unity among the ministers a symptom of this.

into a compact party with a continuous life. But this result depends on the fact that the ministers hold together and stand before the Chamber as a united and inseparable body. If they do not do so, any member of the Chamber may bear allegiance to one of them alone, and thus each minister may have his own band of followers who support his colleagues only provisionally; and in that case the governmental majority will not be a party, but a collection of separate groups, bound together by a more or less precarious alliance. In almost all the states on the continent this is true to some extent; and the various methods of parliamentary procedure already mentioned, together with certain peculiarities of condition and temperament among the people, have tended to foster it. The English parliamentary practice has been generally followed so far as the form is concerned, for the whole cabinet habitually resigns on a hostile vote in the Chamber;[1] but in substance the ministers are by no means jointly responsible, because as soon as they have resigned a new cabinet is formed, which often contains several members of the old one. This state of things has been especially marked in Italy, and Depretis developed it so far as to make scapegoats of his colleagues instead of resigning himself, when the Chamber voted against the cabinet of which he was the head. The result is that every prominent political leader, instead of being a member

[1] This rule is not as strictly observed in Italy as elsewhere, the resignation of a single minister on an adverse vote in Parliament being not uncommon. Two ministers resigned in this way in 1871, one in 1873, one in 1879, two in 1885, two in 1888, and an under-secretary in 1890.

of a great party, is a free lance who fights on his own account at the head of his retainers.

Prominence of the personal element in Italian politics.

The interest, indeed, in Italian politics centres to an unusual degree about the personal struggles between the chiefs of rival factions in the same party; or, to put this truth in a more general form, — one of the most striking features in Italian public life is the prominence of the personal element. Any one who has read the daily papers in Italy cannot fail to have observed an illustration of this in the large space allotted to the description of the altercations between the President of the Chamber and some refractory debater.[1] Now such a prominence of personal matters as compared with questions of principle is not an accident. It is a symptom of a social condition that pervades the whole country, although far more marked in the south than in the north. The Italians are very different from the French. They are not attracted to the same extent by abstract theories, and hence they do not form a number of parties or groups, each clinging obstinately to an ideal form of government, and striving to bring about an ideal organization of society.[2] On the contrary, they are endowed with a great deal of shrewd common sense in politics, and with a pretty clear perception of what is attainable and what is not. The way in which

[1] Jacini says the newspapers found that descriptions of personal contests increased their sale, *I Conservatori*, p. 73.

[2] Turiello (*Fatti*, p. 92) says that, contrary to appearances, the faith in political theories is stronger in Italy than in France. Nevertheless, I believe that the common impression is correct. Turiello admits (*Id.*, pp. 115–16) that the Italian parties are commonly based on personal grounds.

the Republican followers of Mazzini, with a mere handful of exceptions, gave up their theories and accepted the monarchy is sufficient evidence of this. The Italian is not so excitable as the Frenchman, but is comparatively indolent, and this also tends to make him practical. On the other hand, he is far more prone to form cliques, or to attach himself to a patron, in order to obtain some private advantage.

Social disorganization in the south.

The causes of this last tendency run far back into mediæval history. The long-continued oppression in southern Italy, and the lack of a firm and stable authority that maintained social order and administered justice between man and man, made the people look on every government as a natural enemy instead of a protector; and hence society disintegrated, and there developed a want of mutual confidence, and a general absence of social cohesion. The community was reduced to its first elements, and men did just what they have always done when there was no higher power to which they could appeal. They banded themselves together for mutual assistance. The process was precisely the same as that which gave birth to the feudal system, after the fall of Rome had plunged Europe into a state of anarchy. Each man, feeling his weakness and isolation, joined himself to another man or body of men stronger than he, and rendered service on condition of receiving protection. This is the origin of the relation of patron and client in southern Italy; and indeed, the only ties that seem to be thoroughly natural there are those of the family and of patronage.[1] The vendetta or family blood feud,

[1] Turiello, *Fatti*, pp. 125–26.

which has caused so many tragedies, arose from the same necessity for mutual defense, and in some form or other it is certain to flourish wherever the law fails to punish crime. Another and more terrible result of the social condition has been the Camorra in Naples and the Mafia in Sicily, of which we have heard so much since the lynching of the Italians at New Orleans in 1891. These societies were formerly recruited from all ranks in the community, the poorer members obeying the orders of the richer, and enjoying in return an immunity from punishment; but of late years they have undergone a great modification, and are now confined to the lowest classes. The Camorra, indeed, appears to have ceased to be really dangerous, and even the Mafia has become far less active; but it is very difficult to find out the exact truth in regard to Italian secret organizations, because the people who could give evidence about them are intimidated and do not dare to testify.[1]

Secret societies.

Since Italy has been united under the monarchy the associations in the south have tended to pursue a double course. Violence has become confined to the criminal classes, who combine for protection against justice into bands of malefactors, known by the general name of the *Mala Vita* or Bad Life. The classes, on the other hand, that take an active part in politics have formed innumerable cliques, whose vital principle is the relation of patron and client, and whose object is

Their condition of late years.

Growth and power of the political cliques.

[1] See an article by L. Wolffsohn, on the "Italian Secret Societies," in the *Contemp. Rev.*, May, 1891.

the use of the public authority for their private benefit. These cliques started in Naples, and the system was called *Spagnolismo*, from the old Spanish territory in which it took its rise.[1] At first they were kept down by the active work of national regeneration, but after the Left came to power in 1876, they spread like tubercles throughout the whole body politic, although they are still most highly developed in the south. Here the social conditions are peculiarly suited to them, and they extend from the rural communes, where they are interwoven with family ties, and the old family feuds, all through the political system, to the minister and the deputies who form his personal retinue. Some communes and provinces are, indeed, excellently governed, but in others a clique perverts the local administration into an instrument for promoting the private interests of its members, and even for oppressing its foes. Goods belonging to the friends of the clique have, it is said, been known to be passed through the municipal custom house free of duty, while those of its enemies were heavily assessed;[2] and this does not seem to be the only method in which the power to levy local taxes has been grossly abused.[3] It is com-

[1] One of the most authoritative and forcible descriptions of this aspect of Italian politics has been given by the late Marco Minghetti, in his book, *I Partiti Politici*. See, also, Jacini, *I Conservatori;* Turiello, *Governo e Governati in Italia*. The last of these writers gives an interesting account of the recent history and condition of the Neapolitan provinces. *Id.*, *Fatti*, p. 134 *et seq.* For the state of Sicily in this respect, see San Giuliano, *Le Conditione Presente della Sicilia;* Colajanni, *In Sicilia*.

[2] Minghetti, *Ib.*, p. 175.

[3] Colajanni, chaps. viii. and ix.; San Giuliano, pp. 116–17.

monly asserted, moreover, that the councils have been dissolved and the electoral lists falsified in the interest of a faction,[1] and complaints are loud that the communal lands are managed for the exclusive benefit of the ruling class.[2] That the local administration is often misused in these and other ways for personal ends there can be no doubt; and in fact the extension of local self-government is thought by some people to have been a very doubtful blessing on that account.[3] It was to correct this state of things, which the ordinary courts were powerless to remedy, that the administrative tribunals were created, but as complaints have not ceased, it may be assumed that these courts have also proved unequal to the task. Nor does the action of the central government lessen the evil, but rather aggravates it, because the cabinet depends for its tenure of office on the votes of the deputies, who are in league with the local cliques.

The relation of the representative to the factions in his district varies no doubt a great deal in the different parts of the country. It is closest in the Neapolitan provinces, where the system is most fully developed, and where the deputies are themselves often the patrons of the cliques. In the north, on the other hand, the wire-pullers are more commonly the instruments of the public men; while in Sicily the deputy is apt to consider himself a general patron of the whole of the ruling class, which forms a sort of clique for the

[1] Minghetti, pp. 176, 246; Colajanni, *ubi sup.*; San Giuliano, pp. 114–16; and see Pareto, "La Dictature en Italie," *Bib. Univ.*, April, 1895.

[2] Turiello, *Fatti*, pp. 238–46; Colajanni, *ubi sup.*

[3] Turiello, *Fatti*, pp. 72–74; *Proposte*, p. 12 *et seq.*

district to the exclusion of the artisans and peasants.[1] But however the local factions are organized, the deputy must seek to propitiate them, and must in turn be conciliated by the ministers; and on the other hand the extensive functions and arbitrary power of the government render every local interest and every commercial enterprise more or less dependent upon its good will, and thus compel every one to secure its countenance through the intervention of the members of Parliament.[2] The deputies, in fact, look upon themselves as agents to procure favors for their constituents, and a striking illustration of the extent to which this is carried is furnished by the difficulty the government found when it managed the railroads in running fast express trains, on account of the interference of the members of the Chamber, who insisted that all the trains passing through their districts should stop at way stations. That such a condition of things excited no general disapprobation may be judged from a remark made in the debate on the railroad bill in 1876 by Crispi, then one of the leaders of the opposition, who said that it was unavoidable, because the political parties were interested in making for themselves an army of friends.[3]

[1] Cf. Turiello, *Fatti*, p. 196.

[2] Cf. De Viti de Marco, "The Political Situation in Italy," *Nineteenth Cent.*, Oct., 1895.

[3] Minghetti, *I Partiti Politici*, pp. 156–57. One of the few branches of the public service that has been kept almost entirely out of politics, and hence retains the respect of the people, is the army. Turiello, *Fatti*, pp. 199, 316. This is used as an educational as well as a military institution, and has no doubt done a certain amount of good in that way; for not only do the recruits receive direct instruction, but they are moved away from their own part of the country, and thus given some of the advantages of travel, which few of them would ever get otherwise.

Comparison of parties and patronage in France and Italy.

The liberal use of patronage again suggests a comparison with France, — a comparison which has much the same advantage as placing two shades of color side by side, for the contrast not only brings out the difference between the two, but also helps to make clear the precise quality of each of them. In both countries the deputies have bands of supporters in their districts, and use their influence in Parliament to promote the special interests of these dependents. In both the attitude of the deputies toward the ministry is influenced by questions of local administration, and conversely the action of the government in matters of local concern is to some extent determined by the relation of the deputies to the cabinet; and thus the issues that arise in Parliament are a good deal involved with those that affect only the province or the commune. Such a connection between general and local questions is peculiarly marked where the administration is highly centralized, but it exists in some form almost everywhere.

In all countries party lines tend to be the same in national and local politics.

In any country with a popular government party lines tend to become the same in national and local politics, where the franchise in both cases is substantially alike. I do not mean that the same issues are necessarily involved, or even that similar political principles are always applied to both, for a party may advocate economy in one case and favor extravagance in the other, or it may be progressive in one and conversative in the other. Nor do I mean that the same party must prevail in both, for there may be independents who vote for the local can-

didates of one party and the national candidates of the other, so that one party may be victorious in local elections and the other in national ones. This has often occurred in the United States in the case of the vote of a State for the President and the governor, and it happens regularly in Canada. What I mean is that all political struggles, whether national or local, in which party lines are drawn at all, are usually carried on between the same parties. There are two reasons for this. The leaders of a party understand very well the importance of keeping up its organization and discipline, and they know that these would be greatly impaired if their followers were allowed to break ranks and take part in a battle on opposite sides. They realize how hard it would be to rally them under the old standard after they had been disbanded, and hence they want to keep up the party organization by bringing it into every contest. This motive is, of course, strongest where the organization is most highly developed, but to some extent it must be present everywhere, even when the ties of party are as loose as in France and Italy. The other reason goes deeper down into human nature. When men have attached themselves heartily to a party, they tend to become identified with it. It engages their sympathies and colors their judgment. Whatever may be their motives for joining it, — and these are often unconscious and always hard to analyze, — they are to some extent forgotten in the heat of the strife. The ultimate objects for which the party exists are more or less lost sight of. It ceases to be merely a means to an end,

Reasons for this.

and becomes in itself a proximate end. Now it is impossible for most men to feel a strong allegiance of this kind for two separate parties, at least on subjects that are at all connected, because they cannot keep their passions, their attachments, and their antipathies sufficiently distinct. It is hard to separate an act from the actor, to preserve unimpaired our esteem for the character and good judgment of a man who pursues what we believe to be a mischievous policy, or to turn away from leaders whom we have been in the habit of trusting. The partisan is inclined, therefore, to magnify the wisdom and integrity of the men on his own side, and distrust those of his opponents. He cannot avoid bringing his prejudices into play in every political question, and inclines in any contest to associate himself with those people in whom he has learned to have confidence in a kindred struggle. If, therefore, the lines of cleavage of national and local parties are substantially different, the loyalty to one or both of them is liable to become enfeebled until it ceases altogether. Hence it is very difficult to maintain in national and local politics separate parties which are really independent, and whose lines are essentially different.[1] There are, of course, cases where such a separation of party lines exists. A number of instances may be found among the smaller cities in England and America, in some of which the municipal elections have for many

[1] See that keen analysis of American city politics, *The Boss*, pp. 49, 50. Where one of the national parties has an overwhelming majority in some part of the country, it sometimes breaks up there into factions which fight among themselves over local matters. But this is really a case of the subdivision of a party, not of distinct parties for national and local politics. It is a peculiar case within the rule, not an exception to it.

years had little or no connection with national politics. But perhaps the most striking example of all has been furnished by the history of the new county council of London. In the last election to that body, however, the campaign came dangerously near being conducted on party lines, and it does not seem probable that the Moderates and Progressives in the council will long remain distinct from the Conservatives and Liberals in the nation.

Parties are based partly on national and partly on local issues.

When the national and local party are the same, it is clear that both national and local questions must enter into the formation of parties; but it does not follow that both must enter to an equal degree. On the contrary, one of them has usually a decided preponderance over the other, so that either the local parties are formed chiefly on national issues, or the national parties are based mainly on local ones. Now the former is the case in France, the latter in Italy.

In France the former predominate.

The French parties are formed chiefly on national questions; for, although the deputies demand favors for their districts greedily, owe their nominations largely to their personal influence there, and are constantly subjected to pressure from home, still their election turns in the main on national issues. The essential difference between a Moderate, an Opportunist, and a Radical consists in their general political theories, and their views on the course which the central government ought to pursue. While, therefore, the question who shall be the candidate of the Radical party depends on local considerations, the

question whether the district shall be represented by a Radical at all is determined mainly on national grounds.

In Italy the latter.

In Italy, on the other hand, since the enthusiasm that attended the birth of the kingdom faded away, the deputies, especially in the south, have been elected mainly on local and personal issues, with less regard to their views on national questions, and therefore the groups in the Chamber are based chiefly on personal and geographical motives.[1] With the exception of the small groups of Republicans and Socialists there cannot be said to be any national parties at all,[2] for, although a grand reunion of a party is sometimes held, its programme is apt to be vague, and is hardly meant seriously. In France there is a real difference in the principles, the opinions, and the tone of mind of the Radicals and the Moderates; but in Italy, at least if we leave the Extreme Left out of account, it is hard to discern any distinction between the various groups. The bulk of the deputies assemble at Rome virtually unpledged to any definite policy, or rather most of them are pledged only to support the cabinet of the hour, and when that begins to totter they are ready to form any coalition that their own ambition or the local interests of their clients may suggest. Now it is a singular fact that in the Neapolitan provinces, where the constituents are most eager to control the state patronage, the deputy is more free than in the rest of Italy to follow his own convictions on national affairs.[3] In short, the exceptional greed for

[1] See Turiello, *Fatti*, p. 327.

[2] *Id.*, p. 319 *et seq.*

[3] *Id.*, p. 195.

private favors is accompanied by a comparative indifference on public questions, and in this case, as in many others, it may be observed that what is peculiarly true of Naples is true in some degree of the whole of Italy; for, as a recent writer from that city has remarked, the Neapolitan is an exaggerated type of Italian.[1]

Effect of this.

The popular indifference on public questions has a curious effect. It has a tendency to remove those questions from the heat of party strife. They may, of course, be made the occasion for a battle, but this is not necessarily the case, for a vote on them one way or the other entails no breach of party principle, no violation of electoral pledges, and hence if the cabinet is influential and commands respect, it has a good chance of passing its measures without fighting a systematic party opposition. The more completely, therefore, the elections turn on local and personal issues, the more absolutely must the government use its administrative powers to please the deputies, but the more free will it be to follow its own opinions in matters of general policy that do not directly affect private interests. This is to a great extent the case in Italy, and the result is a certain inversion of the natural functions of the branches of the government. The legislature has lost much of its importance in legislation, while the representatives, not indeed as a body but individually, exert over executive acts an influence that lowers the tone of political morality and degrades the administration. The abuse of political influence for private purposes has always existed under every

[1] Turiello, *Fatti*, p. 104.

form of government, but it has a peculiar danger in democracies: first, because the poorer classes who furnish a large part of the voters have, or think they have, comparatively little interest in the economical administration of public affairs; and second, because the smaller the fragments into which power is divided, and the larger the electorate, the more difficult it is for patriotic individuals to oppose the pressure of selfish organizations.

Danger of spoils system in a democracy.

The Italians themselves are fully alive to the blighting effect of the spoils system and of the relation of patron and client with which it is associated in their country. In fact, an Italian writer has truly said that in order to create Italy it is necessary to destroy the cliques;[1] but the task is by no means light. We have seen that in the south, where these grow most rank, they are due to the same cause that formerly gave rise to the Camorra and the Mafia and still disposes men to seek aid and protection from one another; that is, to a want of mutual confidence, and to an absence of respect for law and government, to a lack, in short, of political civilization. Now the only way in which social order can be perfected rapidly is by enforcing public authority rigorously and affording absolute security to the people who obey it, so that every man may rely on the determination and ability of the government to maintain justice, and may look for protection to the state instead of to

Difficulty of curing the social disorganization which causes the cliques.

The use of administrative action inappropriate,

[1] "*Per fare l' Italia bisogna disfare le sette,*" Foscolo, quoted by Turiello, *Fatti*, p. 197.

his powerful neighbors. Such a result can be attained either by means of the administrative officers, or through the courts of law; and, as we have already seen, order was brought into France by the first method and into England by the second. The enforcement of public authority by means of the administration is, indeed, peculiarly suited to an absolute monarchy like that of the French kings, for the ruler's tenure being permanent, he is lifted as far as possible above considerations of person and party, if he has sufficient character to resist the blandishments of his courtiers. But it is clear that a system which involves the use of power in its nature arbitrary can work successfully only in case favoritism is excluded, and the officials are firm and impartial. Now under a parliamentary form of government arbitrary power cannot be exercised impartially, because the ministers are dependent upon the Chamber, and no cabinet can long pursue the steady autocratic policy that is necessary if it is to be continually called to account by deputies whose constituents have suffered in the process. The advantage of enforcing order by means of the administrative officials, instead of by the courts, lies in the fact that the ruler is not tied down to rigid legal formulas, but can exercise his discretion according to the needs of the case, and that is a very great gain in certain conditions of society; but it is this very discretionary element that makes the system incompatible with a parliamentary form of government. The inconsistency in Italy is, indeed, only too apparent.

because inconsistent with a parliamentary system.

The judiciary not powerful enough.

This method of perfecting social order being, therefore, certain to work badly under the existing form of government, the only alternative must be found in the courts of law, provided of course the country has at last reached a point where arbitrary rule can be dispensed with. But if the courts are to produce the desired result they must in turn be able to afford absolute protection to the citizen, and to do so they must have final power to administer justice in all cases. We have already seen that until lately they were very far from having any such authority in Italy, because the government often had a right to interfere when they touched upon an official act; and even under the recent laws on administrative justice they do not hold the position which is necessary to enable them to fulfill so great a task. These laws, indeed, do not strengthen at all the ordinary courts, whose influence, moreover, is weakened by the existence of the five courts of cassation. Now, in order to magnify the authority of law, and to give it the character of something eternal and immutable, independent of time and place, it is important to make the administration of justice as uniform throughout the nation as possible. For this reason a centralization of the judicial system is certainly desirable. In order to raise the moral force of the courts to the highest point, it is also essential to inspire the utmost confidence in the impartiality of the judges, and in this matter the Italians might well find a suggestion in the ancient practice of their own cities. It was the habit in the Middle Ages to appoint to the office of Podesta, or highest judicial

magistrate, a stranger from another city, on the ground that he would be more free from local influence, more independent of the factions of those days. This example might, perhaps, be profitably followed now, and the judges from Rome might sit in circuit and hold court in the different provinces, like the English justices in eyre. But whatever method may be adopted, it is certain that the result must be attained before the present government can work really well. Owing to the lack of a strong system of courts, or rather to a political condition in which such courts cannot exist, the South American republics present a constant parody of the United States, whose institutions they have meant to copy; and in the same way Italy furnishes an illustration of the difficulty of making the parliamentary form of government a success without a powerful judiciary.

The Italian statesmen have had great obstacles to encounter. They found the country divided into a number of separate provinces, each of them with its own peculiar habits and traditions, and some of them socially disorganized. They found it defenseless and poor, and for the most part well-nigh devoid of railroads or telegraphs. They have welded these provinces together into a single nation, to which they have given a uniform administration and enlightened codes of law. They have almost completely suppressed brigandage, and have nearly rooted out the Camorra and Mafia. They have created a large army and a powerful fleet, and they have covered the land with a network of railroads and telegraphs. What wonder if it should

appear that amidst all this labor some things had been left undone and others had been done imperfectly; if it should prove that, in establishing a free government among a people with a defective political training, some institutions had been set up which are inconsistent with each other, or ill adapted to the condition of the country. The nation has not yet worked out her problems, but she has two great advantages: her people are patient and sensible in politics, and have shown themselves willing to bear the immense cost of national regeneration; and she has a number of men, both among scholars and in active public life, who are fully sensible of her difficulties, and are trying earnestly to solve them.

The financial danger.

The greatest immediate danger to Italy is economic. She is a poor country, possessing little capital and a comparatively small amount of commerce or manufactures, and in Sicily, at least, saddled with customs in regard to labor and the tenancy of land that make industrial progress extremely difficult; yet she strives to play a great part in Europe. Her immoderate ambition is said to be fostered by the prevalent classical education which keeps before the mind of her people the glories of ancient Rome; but whether this be the cause or not, the effects are disastrous. The country has rolled up a large debt, and her army and navy are more expensive than she can properly afford. The result is that although the taxes appear to be as heavy as the country can bear, deficits in the budget have reappeared within the last few years, and the im-

migration from the rural districts is alarming.[1] But in spite of the dark shadows that fall across her path, one cannot help believing that the country which has led the world once in arms and once in arts, which has given laws to the whole of Europe, which in these last times has freed her soil from the foreigner, and has made herself a great nation, will find in her people the sagacity and the self-denial necessary to overcome her difficulties and regain a share of her ancient prosperity.

[1] Pareto, "L'Italie Economique," *Revue des Deux Mondes*, Oct. 15, 1891.

CHAPTER V.

GERMANY: THE STRUCTURE OF THE EMPIRE.

Subdivision of Germany under the Holy Roman Empire.

CHERBULIEZ has remarked that most countries which have grown in size have started with a compact territory and increased it by absorbing the adjacent lands, but that Prussia began with her frontiers and afterwards filled in between them. The statement is almost literally true, for early in the seventeenth century the Electors of Brandenburg, who were the ancestors of the Kings of Prussia, acquired the large Duchy of Prussia on the Baltic and the Duchy of Cleves on the Rhine, possessions which form to-day very nearly the extreme limits of the Prussian monarchy on the east and west. At that time these duchies did not touch the Electors' other territories, and in fact until less than thirty years ago several States were so wedged in among the Prussian dominions as to cut the kingdom quite in two. Nor was this the case with Prussia alone. The whole map of Germany as it stood in the last century was a mass of patches of different color mingled together in bewildering confusion. Not only were some of the principalities inconceivably small, but they often consisted in part of outlying districts at a distance from one another, and entirely surrounded by the estates of some other potentate. The cause of such a state of things is to be

found in the excessive development of the feudal system, which treated sovereignty as a private right of the ruler, so that princes dealt with their fiefs very much as men do with their lands to-day. They acquired them freely in all directions by inheritance, by marriage, and even by purchase, and, what was worse, at their death they divided them as they pleased among their sons. Still another source of confusion was presented by the bishops and other high church dignitaries, who held large estates which they ruled as temporal sovereigns. The result was that Germany was divided in a most fantastic way among several hundred princes, who owed, it is true, a shadowy allegiance to the Emperor as head of the Holy Roman Empire, but for all practical purposes were virtually independent.

The growth of Prussia.

Almost alone among the German States Prussia was steadily gaining in size and power. Her growth may be traced primarily to the *Constitutio Achillea* of 1473, which forbade the splitting up of the monarchy among the sons of the Electors, and thus kept all their dominions together; but it was due chiefly to the thrift, the energy, and the sagacity of the rulers of the House of Hohenzollern. At the close of the thirty years' war, in 1648, the Great Elector obtained possessions which made his domains larger than those of any other German State except Austria, and in the next century the annexations of Frederic the Great more than doubled the population of his kingdom. The growth of Prussia was suddenly checked by an event that tended ultimately to hasten its development. This was the outbreak of

Checked for a time, but in the end helped by Napoleon.

the French Revolution and the career of Bonaparte. When a series of victories had laid Germany at his feet, Napoleon suppressed a large number of petty principalities including all the ecclesiastical ones, and combined the smaller States that remained into the Confederation of the Rhine. He also deprived Prussia of half her territory, thinking by these means to reduce her to impotence, and create in the heart of Germany a body that would always be devoted to the cause of France. But in fact the petty principalities had been too small to act separately or to combine effectively, and too independent to be made serviceable by any sovereign; and by suppressing them Napoleon had given the Germans some little capacity for organization, which was used against him as soon as the tide turned.[1]

The Germanic Confederation and the Diet.

After his overthrow Germany was reorganized by the treaty of Vienna, and the States, which now numbered only thirty-nine, were formed into a loose confederation. This was not properly a federal union, but rather a perpetual international alliance, the States remaining separate and independent, except for matters affecting the external and internal safety of Germany. The only organ of the Confederation was a Diet composed of the diplomatic agents of the different States, who acted like ambassadors, and voted in accordance with the instructions they received from their respective governments.

[1] This is very well stated by Colonel Malleson in his *Refounding of the German Empire*, pp. 4–6. Napoleon prophesied that within fifty years all Europe would be either Republican or Cossack. One of the chief causes of the failure of this prediction has been the creation of a united Germany, which Napoleon himself unwittingly helped to bring about.

It had power to declare war and make peace, to organize the federal army, to enact laws for the purpose of applying the constitution, and to decide disputes between the States; but it had no administrative officers under its command, the federal laws being executed entirely by the officials of the States. Hence the only means of getting its orders carried out in case a State refused to obey them was by the process known as federal execution, which meant that the Diet called on one or more members of the Confederation to attack the recalcitrant State, and by invading its territories to compel submission. The procedure in the Diet was a complicated one. For ordinary matters it acted by sections called *curiæ*, when the eleven largest States had one vote apiece, the other twenty-eight being combined into six groups each of which had a single vote. For constitutional questions, on the other hand, and those relating to peace and war, the Diet proceeded *in plenum*, and in that case each of the smaller States had one vote, while the fourteen largest had two, three, or four votes apiece.[1] This distribution of votes was by no means in proportion to population, for the largest States were much more than four times as big as the smallest, but it was a distinct recognition of an inequality of rights on the part of the States, and as such it still retains an especial importance because the arrangement of the votes in the *plenum* has continued almost unchanged in one of the chief organs of the Empire to-day. It must not be supposed,

[1] Six of the States had four votes, five had three, three had two, and twenty-five had one.

however, that the influence of the States in the Diet was determined by the number of their votes, for Austria, which had a permanent right to the presidency of the Assembly, and Prussia, which had a permanent right to the vice-presidency, exercised in fact a controlling authority. When these two great powers agreed they had their own way; when they disagreed, which often happened, the opinion of Austria usually prevailed.

Failure of the Liberal attempt to unite Germany in 1848–49.

The wars of Napoleon did a great deal more for Germany than to suppress petty principalities and give rise to a clumsy confederation. They awakened a sentiment of German nationality. At first this was only a sentiment, and for a long period it had no practical results. It was especially strong among the Liberals, and grew stronger as time went on; but under the reaction that followed the overthrow of Napoleon, the Liberals had little influence, until the convulsions of 1848 and 1849 brought them to the front. At this time they tried hard to bring about a national union of Germany, but they were sadly hampered by their theoretical views and their want of political experience. Their aim was a German state constructed on an ideal model, and they lacked the quality which is essential to real statesmanship, — the power to distinguish the elements in the existing order of things which have a solid basis, to seize upon these, and adapt them to the end in view. Hence their efforts expended themselves in declamation and academic discussion, and came to nothing. In May, 1848, they succeeded in bringing together at

Frankfort a National German Parliament elected by universal suffrage, and if this body had proposed quickly any rational plan for a union of Germany, the chances of its adoption would have been very good, for every government in the country had been forced to give way before the fierce onslaught of the Liberal movement. But unfortunately more than four months of precious time were consumed in debating the primary rights of the citizen, and when these were finally disposed of the tide was beginning to ebb. At last, in March, 1849, a constitution was agreed upon, and the imperial crown was tendered to the King of Prussia; but the offer came too late. Had it been made in the preceding summer it might have been accepted, but now the revolution had spent its force. Austria, at first paralyzed by insurrection, had now recovered from the shock, was rapidly putting down her rebellious subjects, and under the able leadership of Prince Schwartzenberg was determined to prevent any reorganization of Germany which would diminish her influence. After a feeble struggle Prussia yielded to her more determined rival, the revolutionary movement came to an end, and the old Confederation was restored.

Bismarck.

Again a period of reaction set in, which lasted about ten years, when Germany was thrilled by the events in Italy, and the Liberals again became powerful. Whether they would have avoided their former mistakes and succeeded better it is impossible to say, for just at this time there appeared upon the scene a man who was destined to stamp his

will on Germany, and change the whole face of European politics. That man was von Bismarck. He belonged to the lesser Prussian nobility, which is the most conservative class in the race; but he was of far too large a calibre to be bound down by traditional prejudices; and indeed he had already formed very decided opinions of his own on the subject of German unity. He had served as a representative of Prussia at the Diet, and had learned that a German nation was impossible so long as the two great powers — Austria and Prussia — were contending for a mastery. He saw that the first step must be the forcible expulsion of Austria from all share in German politics, and he believed that union could never be brought about by argument, that the Germans could not be persuaded, but must be compelled to unite, that the work must be done, as he expressed it, by blood and iron.

An important advance towards closer relations between the States had, indeed, been made long ago by the creation of the *Zollverein* or customs union. This had been founded by Prussia in the early part of the century, and had gradually been extended until it included almost all the German States, except Austria, which had been jealously excluded by the Prussian statesmen; but valuable as the Zollverein was in teaching the people their common interests, Bismarck was no doubt right in thinking that no further progress could be expected without the use of force. Now it was precisely on this point that his methods differed from those of the Liberals, for war formed no

part of their programme, and for that very reason they were unable to understand his policy. In 1859 they had obtained a majority in the lower house of the Prussian Parliament, and had very soon become involved in a quarrel with King William over the reorganization of the army, on which he had set his heart.[1] In 1862 the King turned to Bismarck and made him the President of the Council. Bismarck submitted to the chamber a budget containing the appropriations for the military changes, and when the chamber refused to pass it he withdrew it, and governed without any budget at all. This he was enabled to do, because the taxes were collected under standing laws which required no reënactment, and in fact could not be changed without the consent of the crown; and because a doctrine was developed that in case the King and the two houses were unable to agree upon appropriations, the King was entitled to make all those expenditures which were necessary in order to carry on the government in accordance with the laws regulating the various branches of the administration.[2] The Liberals were furious at this budgetless rule, but Bismarck proceeded in spite of them. He persuaded Austria to join Prussia in wresting the duchies of Schleswig and Holstein from Denmark in 1864, and then contrived to quarrel with her about the disposition to be made of them. The majority in the German Diet sided with Austria, and ordered the

The constitutional conflict.

[1] William became Regent on Oct. 7, 1858, and on the death of his brother Frederick William IV., on January 2, 1861, he became King.

[2] See page 298, *infra*.

troops of the Confederation mobilized against Prussia. Then followed the war of 1866, and the crushing defeat of Austria and the smaller German States that took her part.

The war of 1866.

Bismarck had originally intended to compel all the States except Austria to form a federal union, but the intervention of Napoleon III. forced him to abandon the plan, and limit the Confederation to the country north of the river Main.[1] He therefore determined as a compensation to increase the direct strength of Prussia by annexing the States that had fought against her.[2] Hanover, Electoral Hesse,[3] Nassau, and Frankfort, besides Schleswig-Holstein, were accordingly incorporated in Prussia, while with the other States north of the Main a new federal union was formed under the name of the North German Confederation.[4] This had for its president the Prussian King; and for its legislature two chambers, — one the Reichstag, a popular assembly elected by universal suffrage, and the other the Bundesrath, or federal council, which was copied from the old

Prussian annexations and the North German Confederation.

[1] Luxemburg and Limburg, which belonged to Holland, had been a part of the old Confederation, but were allowed to drop out at this time, and were not included in the reorganization of Germany. This was true also of the tiny principality of Lichtenstein in the south.

[2] Von Sybel, *Begründung des Deutschen Reiches*, book xix. ch. ii.

[3] Also called Hesse-Cassel to distinguish it from Hesse-Darmstadt or grand-ducal Hesse, which, being the only Hesse remaining in existence as a separate State, is hereinafter called simply Hesse.

[4] The constitution of the Confederation was first agreed upon by the governments of the several States, then accepted with slight modifications by a National Assembly elected by universal suffrage for the purpose, and finally ratified by the legislatures of the States.

Diet, and composed in the same way of the plenipotentiaries of the different States, but was endowed with peculiar and extensive powers. Austria was excluded from all participation in German politics; while the four States south of the Main — Bavaria, Wurtemberg, Baden, and Hesse[1] — became independent, and were expressly left at liberty to form a separate union among themselves. As a matter of fact, they made offensive and defensive alliances with the Confederation, and formed with it a Zollverein or customs union, whose organs were the two chambers of the Confederation reinforced by representatives from the southern States. Every one felt that the union of Germany was incomplete so long as these States were not a part of it; but Bavaria and Wurtemberg were reluctant to surrender their independence; and the enthusiasm aroused by the war with France in 1870 was required to raise the sentiment for German nationality to such a pitch as to sweep them into line. Even then they demanded and obtained special privileges as the price of their adhesion; but at last all the difficulties were arranged, and in the autumn of 1870 treaties were made with the four southern States whereby they joined the union. The name of the Confederation was changed at the same time to that of "German Empire," the president being given the title of Emperor; and in the course of the following winter the changes and additions

The German Empire.

[1] This is Hesse-Darmstadt. It lay on both sides of the Main, but the part on the north of that river was already included in the North German Confederation.

entailed by these treaties were embodied in a new draft of the constitution.[1]

Practical character of the constitution.

The constitution has nothing about it that is abstract or ideal. It was drawn up by a man of affairs who knew precisely what he wanted, and understood very well the limitations imposed upon him, and the concessions he was obliged to make to the existing order of things. His prime object was to create a powerful military state, and hence, as has been pointed out, the articles on most subjects are comparatively meagre, but those on the army, the navy, and the revenue are drawn up with a minuteness befitting the by-laws of a commercial company.[2]

Before proceeding to a description of the organs of

[1] Cf. Laband, *Deutsches Staatsrecht*, 2d ed. ch. i. In 1873 three amendments were made in this instrument. The first (that of Feb. 25) abolished the provision limiting the right to vote in the Reichstag, on those matters which by the constitution are not common to the whole Empire, to the representatives of the States affected. The second (that of March 3) put the lighthouses, buoys, etc., along the coast under the control of the federal government; and the third (that of Dec. 20) extended the legislative power of the Empire over the whole field of civil and criminal law. It had previously covered contracts, commercial law, and criminal law. Except for a change in the term of the Reichstag in 1888 from three to five years, the constitution has remained unaltered since that time, but substantial changes in the fundamental law of the Empire have been made without a formal modification of the text. (See Laband, vol. i. pp. 48–49, 51.) Some of the German jurists maintain that such a practice is wrong (von Rönne, *Staatsrecht des Deutschen Reiches*, 2d ed. pp. 31–34; Meyer, *Lehrbuch des Deutschen Staatsrechts*, p. 416); others that it is quite proper, provided the majority required in the Bundesrath for a formal amendment of the constitution is in fact obtained. (Laband, vol. i. pp. 545–49; Arndt, *Verfassung des Deutschen Reiches*, pp. 290–91.) For the method of amending the constitution, see pages 246, 250–51, *infra*.

[2] Lebon, *Etudes sur l'Allemagne Politique*, Introd., p. iii.

the state, it will be worth while to examine the nature of the Confederation. We are in the habit of speaking of the German Empire as a federal government, and rightly; but we must bear in mind that it departs essentially from the type which we commonly associate with that term, and which is embodied in our own constitution. We conceive of a federal system as one in which there is a division of powers between the central government and the States, according to subjects, so that in those matters which fall within the sphere of federal control the central government not only makes the laws, but executes them by means of its own officials. Thus Congress enacts a tariff; the United States custom house collects the duties; and the federal courts decide the questions that arise under the law. But all this is very different in Germany. There the legislative power of the central government is far more extensive than in this country, for it includes almost everything that is placed under the control of Congress and many other matters besides. In addition to such subjects as customs duties and taxes, the army and navy, the consular service, and the protection of foreign commerce, which are obviously essential, the list comprises many matters of domestic legislation. It covers not only the posts and telegraphs,[1] transportation on streams running through more than one State, and extraditions between the States, but also in general terms railroads,[2] roads and canals, citizenship, travel,

Nature of the Confederation.

Large legislative and small executive powers.

[1] Except in Bavaria and Wurtemberg.

[2] Except in Bavaria.

change of residence, and the carrying on of trades, also the regulation of weights and measures, of coinage and paper money, and of banking, patents, copyrights, and of medical and veterinary police. Moreover, it includes the regulation of the press and associations, and finally the whole domain of ordinary civil and criminal law and of judicial proceedings. All these things are declared subject to imperial legislation and supervision.[1]

The administrative power of the Empire, on the other hand, is very small, the federal laws being carried out in the main by the officers of the States as under the Confederation of 1815. Except, indeed, for foreign affairs, the navy, and to some extent the army and the postal and telegraphic service, the executive functions of the Empire are limited for the most part to the laying down of general regulations, and a supervision of their execution by the several States.[2] Thus the federal government can enact a tariff, make regulations which shall govern the custom-house officers, and appoint inspectors to see that they are carried out; but the duties are actually collected by state officials.[3] One

[1] Art. 4 of the constitution and the amendment of Dec. 20, 1873.

[2] See Laband, § 66. In the case of the army (Const. Arts. 63–66) and the posts and telegraphs (Art. 50), the highest officers are appointed by the Emperor, who gives them their orders, while the subordinates are appointed by the States.

[3] As a rule the whole net revenue flows into the imperial treasury, but by the tariff act of 1879 the net revenue from customs duties above one hundred and thirty million marks is divided among the States in proportion to their population. In case the receipts of the Empire are not equal to its expenses, the deficiency is covered by means of contributions called *Matricularbeiträge* assessed on the different States in proportion to their

naturally asks what happens if a State refuses or fails to carry out a federal law. The matter is reported to the Bundesrath, which decides any controversy about the interpretation of the law.[1] But suppose the State persists in its refusal to administer the law, what can the federal government do? It cannot give effect to the law itself, nor has it any officials for the purpose. Its only resource is federal execution, — that is, an armed attack on the delinquent State, — which can be ordered by the Bundesrath, and is carried out by the Emperor.[2] This last resort has never been used, nor is it likely to be, because the Emperor is also the King of Prussia, and Prussia alone is not only larger than any other State, but larger than all the rest put together. Execution against Prussia is therefore doubly out of the question; and any other State would be so easily overpowered that it is certain to submit, rather than provoke an appeal to force.

Another conception that we associate with federal government is an equality of rights among the mem-

population. (Const. Art. 70, and see Laband, § 126.) This was originally intended to be a subsidiary and exceptional source of revenue, but owing to the quarrel between Bismarck and the Reichstag on the subject of federal taxation, the Matricularbeiträge became large and permanent. (Cf. Lebon, *Allemagne*, p. 106 *et seq.*) Under the present system the excess of customs duties is paid to the States, and returned by them as contributions, — a practice established in order to preserve the control of the Reichstag over the imperial revenues, for the assessments upon the States require a vote of that body, whereas the customs duties once voted can be collected without further authorization, and the tariff cannot be repealed without the consent of the Bundesrath, which for this purpose is entirely subject to the will of the Emperor. See page 247, *infra*.

[1] Const. Art. 7, § 3.

[2] Const. Art. 19, and see Laband, vol. i. pp. 105–6.

bers. But in the German Empire all is inequality. It would, indeed, have been impossible to make a federation on really equal terms between a number of States, one of which contained three fifths of the total population, while the other twenty-four contained altogether only two fifths. The compact could not fail to resemble that between the lion and the fox, or rather a compact between a lion, half a dozen foxes, and a score of mice. The larger States are accorded all sorts of privileges, and so much of the lion's share of these falls to Prussia that it is hardly too much to say that she rules Germany with the advice and assistance of the other States. In the first place she has a perpetual right to have her King the Emperor of Germany.[1] Secondly, amendments to the constitution — although requiring only an ordinary majority vote in the Reichstag — are defeated in the Bundesrath if fourteen negative votes are thrown against them, and as Prussia has seventeen votes in that body, she has an absolute veto on all changes of the constitution.[2] Besides this, it is expressly provided that in the case of all bills relating to the army, the navy, the customs

Inequality of rights among the members.

Privileges of Prussia.

Under the constitution.

[1] Const. Art. 11.

[2] Const. Art. 78. In the North German Confederation a two thirds vote in the Bundesrath was necessary for a change in the constitution, but when the South German States were admitted, Prussia had no longer a third of the delegates, and in order to preserve her veto the proportion required was increased to three quarters. Finally at the instance of Bavaria, which wanted to enlarge the power of the States of the second size, it was agreed that fourteen negative votes should be enough to defeat an amendment to the constitution. Arndt, p. 290; Robinson, *The German Bundesrath*, p. 40.

duties, or the excises, and in the case of all proposals to revise the administrative regulations for collecting the revenue, the vote of Prussia in the Bundesrath is decisive if cast in favor of maintaining the existing institutions.[1] In other words, Prussia has a veto on all measures for making changes in the army, the navy, or the taxes. She has also the casting vote in case of a tie in the Bundesrath,[2] and the chairmanship of all the standing committees of that body.[3]

And by special conventions with the other States.

These are Prussia's constitutional privileges; but she has others obtained by private agreement with her smaller partners; for the several States are at liberty to make conventions or treaties with each other in regard to the affairs that remain subject to their control.[4] When the North German Confederation was formed, universal military service and a uniform organization like that of Prussia were introduced into all the States, but the army was not made exclusively a national or left entirely a state institution.[5] The constitution provides that the military laws shall be made by the Empire,[6] and

The army.

[1] Const. Arts. 5, 35, and 37. [2] Const. Art. 7.

[3] Const. Art. 8; Laband, vol i. p. 264. Except the committee on foreign affairs, where, as will be explained hereafter, it would be of no use to her.

[4] Laband, § 63. To some extent the States are at liberty to make separate conventions with foreign powers, and they have a right to send their own representatives to foreign courts. Laband, § 71.

[5] Const. Arts. 57–68. The last eight of these articles do not apply to Bavaria, and only partially to Wurtemberg. See page 250, *infra*. The expense of maintaining the army is borne by the Empire. Unlike the army, the navy is a purely national institution. Art. 53.

[6] The double position of the Prussian monarch comes out curiously here, for the constitution provides: first, that the military laws and regu-

declares that the forces of the country shall be a single army under the command of the Emperor, whose orders they are bound to obey. It gives him a right to inspect and dispose of the troops, and to appoint all officers whose command includes the entire contingent of a State. It provides also that the selection of the generals shall be subject to his approval, but it leaves to the States the appointment of all inferior officers, and the management of their troops in other respects. Now these reserved rights were of little value, and all but three of the States transferred them to Prussia, chiefly in consideration of an agreement on the part of the Emperor not to remove the troops from their own territory except in case of actual necessity. Thus the contingents of these States are recruited, drilled, and commanded by Prussia, and form, in short, an integral part of her army.[1]

Convention with Waldeck.

A number of conventions of a similiar character, affecting other public matters, such as the postal service and the jurisdiction of the courts, have been concluded between the States; but

lations of Prussia shall be in force throughout the Empire; second, that thereafter a comprehensive imperial military law shall be enacted; and third that any future general orders of the Prussian army shall be communicated by the military committee of the Bundesrath to the commanders of the other contingents for appropriate imitation.

[1] Some of the States transferred all their rights (Baden with a provision that her troops should form a separate corps); others retained certain rights, mainly of an honorary nature, but agreed that their troops should be united with the Prussian army, and that Prussia should appoint the officers. Only Bavaria, Saxony, and Wurtemberg still exercise the military functions reserved to them by the constitution. Cf. Laband, § 94, iii.; Schulze, *Lehrbuch des Deutschen Staatsrechts*, § 335; Meyer, *Lehrbuch*, § 197.

the most comprehensive compact of all was made by Waldeck. The ruler of this little principality was crippled with debts, and unable to raise the money required for the reorganization of his army. So he sold his governmental rights as a whole to the King of Prussia, retired from business, and went to Italy to live upon his income, while the Prussian government, having bought the good-will of his trade, proceeded to carry it on as his successor.[1] There is something decidedly comical in treating the right to govern a community as a marketable commodity, to be bought and sold for cash; but to Bismarck the matter presented itself as a perfectly natural business transaction, and in fact the contract bears a strong resemblance to the lease of a small American railroad to a larger one.

Privileges of the other States.

Hamburg and Bremen.

Such are the special privileges of Prussia. Those reserved to the other States are far less extensive. By the constitution Hamburg and Bremen had a right to remain free ports, outside of the operation of the tariff laws;[2] but both of them have now surrendered this privilege.[3] The other special rights are mostly enjoyed by the southern States, and were given to them as an inducement to join the Confederation. Thus Bavaria,

[1] Cf. p. 353, *infra*.

[2] Const. Art. 34.

[3] The treaty for this purpose was made with Hamburg in 1881, and went into effect Oct. 1, 1888. That with Bremen was made in 1885. For an account of these treaties and the way they were brought about, see Blum, *Das Deutsche Reich zur Zeit Bismarck's*, p. 360 *et seq.*; Laband, vol. ii. pp. 901–4.

Wurtemberg, and Baden are exempt from imperial excises on brandy and beer, and have a right to lay excises of their own on these articles.[1] Bavaria and Wurtemberg have their own postal and telegraph services, which are subject only to general imperial laws.[2] Except for the principle of universal military service, and the agreement to conform to the general organization of the imperial army, Bavaria has in time of peace the entire charge of her own troops, the Emperor having only a right to inspect them; while Wurtemberg, although not so much favored as this, has greater military privileges than the remaining States.[3] Bavaria is further exempt from imperial legislation in regard to railroads,[4] and to residence and settlement;[5] and finally, by the constitution or by military convention, Bavaria, Saxony, and Wurtemberg have a right to seats on the committees of the Bundesrath on foreign affairs and on the army and fortresses.[6] In order to guarantee more effectually these privileges, it is provided that they shall not be

Bavaria, Wurtemberg, and Baden.

[1] Const. Art. 35. But in 1887 they gave up their privileges in regard to brandy. See Blum, p. 532; Laband, vol. ii. pp. 920, 923–24.

[2] Const. Art. 52.

[3] Treaties of Nov. 23, 1870, with Bavaria; and Nov. 25, 1870, with Wurtemberg; incorporated in the constitution by a reference in the Appendix to Part XI.

[4] Except in the case of lines that have a strategic importance. Const. Art. 46.

[5] Const. Art. 4, § 1.

[6] Const. Art. 8; Laband, vol. i. p. 113. By the treaty of Nov. 23, 1870 (Schlussprotokoll, Art. ix.), Bavaria has a right to preside over the Bundesrath in the absence of Prussia, but as this never happens, the privilege is merely honorary.

changed without the consent of the State entitled to them.[1]

From this description of the privileges of the different States it is evident that the German Empire is very far from being a federal union of the kind with which we are familiar. It is rather a continuation of the old Germanic Confederation, with the centre of gravity shifted from the States to the central government, and the preponderating power placed in the hands of Prussia, — the other large States retaining privileges roughly in proportion to their size.[2]

The empire a continuation of the old Confederation in a modified form.

Its organs.

[1] Const. Art. 78. Meyer (*Lehrbuch*, p. 421) and Zorn (*Staatsrecht des Deutschen Reiches*, pp. 88–93) think this provision applies only to the limitations on the competence of the Empire, and not to the privileges given to the several States in the organization of the government, such as the presidential rights of Prussia, the allotment of the votes in the Bundesrath, the seats on committees, etc. Their opinion, however, is not generally accepted. Laband, vol. i. pp. 110–14; Schulze, § 249; v. Rönne, vol. ii. pp. 43–48. It is universally agreed that an affirmative vote in the Bundesrath by the delegate of the State is a sufficient consent by that State to a law affecting its privileges so far as the Empire is concerned; but there is a difference of opinion on the question how far the ruler of the State is bound, or can be bound, by state law to consult his parliament. Laband, vol. i. pp. 114–17; Schulze, bk. ii. p. 19; v. Rönne, vol. ii. pp. 36–43; Meyer, p. 422; Zorn, pp. 94–98.

[2] In saying this I am speaking only of the political structure of the government, and do not mean to touch the philosophical question whether the sovereignty has or has not been transferred from the States to the Empire. This point has been the subject of elaborate argument, and in fact the same juristic questions about the origin and nature of the federal government have been discussed in Germany as in the United States. (For a reference to these discussions see Laband, vol. i. pp. 30–33, 52 *et seq.*, and see especially Jellinek, *Die Lehre von den Staatenverbindungen.*) Some of the German publicists maintain that the sovereignty resides in the Bundesrath, a view which, as Burgess points out in his

Its chief organ of government is still the old Diet, renamed the Bundesrath or Federal Council, to which have been added on one side an Emperor, who is commander-in-chief of the forces, and represents the Empire in its relation with foreign powers; and, on the other, an elected chamber, called the Reichstag, created for the sake of stimulating national sentiment and enlisting popular support as against the local and dynastic influences which have free play in the Bundesrath. Let us consider each of these organs in detail.

The Reichstag.

The Reichstag is elected for five years by direct universal suffrage and secret ballot.[1] The voters must be twenty-five years old, and not in active military service, paupers, or otherwise disqualified.[2] The members are chosen in single electoral districts fixed by imperial law.[3] These had originally a hundred thousand inhabitants apiece,[4] but they have not been revised for more than a score of years, and with the growth of the large cities have gradually become very unequal. In the case of Berlin the disproportion is enormous, for the city has now over a million and a half inhabitants, but is still rep-

Its composition.

Political Science (vol. ii. pp. 90–93) is somewhat artificial. For those who think as I do, that sovereignty is not in its nature indivisible, the question loses much of its importance. (Cf. *Essays on Government*, chapter on the Limits of Sovereignty.)

[1] Cf. Laband, § 34; Const. Arts. 20, 24. Until 1888 the period was three years.

[2] Wahlgesetz, May 31, 1869, §§ 1–3. Every voter who has been a citizen of any State for a year is eligible in any district in the Empire without regard to residence. Soldiers in active service, though not allowed to vote, are eligible. (*Id.*, § 4.)

[3] Wahlgesetz, § 6.

[4] Except in the smallest States.

resented by only six members. The government, however, is not anxious for a redistribution of seats, because Berlin elects Radicals and Socialists, who form a troublesome opposition, — a tendency which is also true of other large centres. As in the United States, no district can be composed of parts of different States, so that every State, however small, elects at least one representative. The three hundred and ninety-seven seats are in fact distributed as follows: Prussia has two hundred and thirty-five, or about three fifths of the whole number, Bavaria forty-eight, Saxony twenty-three, Wurtemberg seventeen, Alsace-Lorraine fifteen, Baden fourteen, Hesse nine, Mecklenburg-Schwerin six, Saxe-Weimar three, Oldenburg three, Brunswick three, Hamburg three, Saxe-Meiningen two, Saxe-Coburg-Gotha two, Anhalt two, and all the rest one each.[1] As regards the method of election the system of *ballotage* prevails; that is, an absolute majority is required for election on the first ballot, and if no one obtains this, a second ballot takes place which is confined to the two candidates who have received the largest number of votes.[2]

Payment of members.

Universal suffrage was looked upon as an experiment of a somewhat hazardous character, and Bismarck insisted on the non-payment of the members of the Reichstag as a safeguard.[3] This has

[1] Wahlgesetz, § 5; Const. Art. 20; Act of June 25, 1873 (Alsace-Lorraine), § 3.

[2] Wahlgesetz, § 12. Lebon (p. 82) thinks this last provision, by cutting out all the candidates but the two highest on the list, favors the government and hampers the free expression of opinion.

[3] Const. Art. 32.

been a bone of contention with the Liberals ever since, — the Reichstag having repeatedly passed bills for the payment of members, which the Bundesrath has invariably rejected. The absence of remuneration has not been without effect, for it has deterred university professors and other men of small means, usually of liberal views, from accepting an office which entails the expense of a long residence in Berlin, but it has not fulfilled the predictions that were made either by its foes or its friends, for it has not caused a dearth of candidates, or discouraged the presence of men who make politics their occupation.[1] The provision has, however, a meaning one would hardly suspect. In 1885, when the Socialist representatives were paid a salary by their own party, Bismarck, claiming that such a proceeding was illegal, caused the treasury to sue them for the sums of money they had received in this way, and, strange to say, the Imperial Court of Appeal sustained the suits.[2] The object of withholding pay from the members is, of course, to prevent the power of the poorer classes from becoming too great; but a much more effectual means to the same end is the habit of holding elections on working days, instead of holding them on Sundays, as is done in France and most of the other Catholic countries.[3]

[1] Blum, pp. 36–37.

[2] Laband, § 38 ; Lebon, p. 78. The members cannot be arrested during the session except for certain flagrant offenses, and if a criminal prosecution is pending against one of them the Reichstag can order him to be set at liberty (Const. Art. 31), but, in fact, it has not always been easy to make this last right effective. Lebon, pp. 84–85.

[3] Lebon, p. 82.

The Reichstag has the ordinary privileges of a legislative assembly, electing its own president, making its own rules, and deciding upon the validity of elections.[1] Its internal organization conforms to the pattern generally followed in continental chambers. At the beginning of each session the members are divided by lot into seven *Abtheilungen* or sections, which correspond to the Bureaux of the French Chambers, but differ from these in the important respect that they last during the whole session, instead of being renewed at short intervals. The duties of the sections consist in making a preliminary examination of the validity of elections to the Reichstag, and in the choice of committees, each section electing one or more committee-men, according to the importance of the committee.[2] As in France and Italy, however, the choice by the sections is really cut and dried beforehand. It is in fact controlled by the Senioren-Convent, a body composed of the leaders of the different parties, who determine in advance the number of seats on the committee to which each party shall be entitled.[3] Bills are not always referred to a committee; but it is noteworthy that the more advanced Liberals have constantly urged such a reference in the case of government bills, because the authoritative influence of the ministers is thereby diminished, and greater opportunity is given for criticism and amend-

The committee system.

[1] Const. Art. 27.

[2] Laband, vol. ii. pp. 327-29. Unlike the French Bureaux, their choice is not confined to members of their own section. Lebon, p. 88.

[3] Lebon, *Ib.*; Dupriez, vol. i. p. 526; Laband, vol. i. p. 328.

ment; while the more moderate parties, following the lead of the government, have often preferred an immediate discussion of important measures by the full house, without the intervention of any committee at all.

The powers of the Reichstag.

The powers of the Reichstag appear very great on paper. All laws require its consent, and so do the budget, all loans, and all treaties which involve matters falling within the domain of legislation. It has a right to initiate legislation, to ask the government for reports, and to express its opinion on the management of affairs.[1] In reality, however, its powers are not so great as they seem. The constitution provides, for example, that the budget shall be annual,[2] but the principal revenue laws are permanent, and cannot be changed without the consent of the Bundesrath,[3] while the most important appropriation, that for the army, is virtually determined by the law fixing the number of the troops, and this has hitherto been voted for a number of years at a time.[4] The chief function of the Reichstag is, in fact, the consideration of bills prepared by the Chancellor and the Bundesrath. These it criticises and amends pretty freely; but its activity is rather negative than positive, and although important measures have occasionally

[1] Const. Arts. 5, 11, 23, 69, 73; Laband, § 33.

[2] In 1867 Bismarck wanted triennial sessions, and in 1888, when the term of the Reichstag was changed to five years, he wanted the sessions held only every other year.

[3] It is to be remembered, moreover, that the bulk of the civil administration is in the hands of the States, which provide the means of carrying it on.

[4] In 1871, for three years; in 1874, 1880, and 1887 for seven years; and in 1893 for five years.

been passed at its instigation,[1] it cannot be said to direct the policy of the state either in legislation or administration.[2]

The right of dissolution.

The influence of the Reichstag is also diminished by the fact that it can be dissolved at any time by the Bundesrath with the consent of the Emperor.[3] In most constitutional governments at the present day the power of dissolution is the complement of the responsibility of the ministers, and is used, at least in theory, to ascertain whether the cabinet possesses the confidence of the nation. But in Germany it exists without any such responsibility, and hence is simply a means of breaking down resistance in the Reichstag. It has, indeed, been used for this purpose on three memorable occasions: first, in 1878, when the Reichstag refused to pass a bill for the repression of agitation by the Socialists; afterwards in 1887, when it refused to pass the bill fixing the size of the army for seven years; and again in 1893, when it refused to sanction changes proposed in the military system. In each case the new Reichstag supported the plans of the government, and thus a serious conflict with the Chancellor was avoided, and the

[1] A striking example of this was the amendment to Art. 4 of the constitution extending the competence of the Empire to ordinary civil and criminal law.

[2] Cf. Lebon, pp. 113–16. The debate in the budget is used as an occasion for criticism of the government, and for the expression of opinion, but in the budget itself few changes are made. The reductions have little importance, while the rejection of an appropriation asked for is extremely rare, and an increase is almost unknown. Dupriez, vol. i. pp. 543–44.

[3] Const. Art. 24.

question of the ultimate authority of the different organs of the state was postponed.

Interpellations.

The rules of the Reichstag provide for interpellations, but the question to whom these shall be addressed involves one of the paradoxes, or contradictions between theory and practice, which are common in the government of the Empire. There is no imperial cabinet, and the Chancellor, who is the only minister, has no right, as such, to sit in the Reichstag. In theory he comes there only as one of the delegates to the Bundesrath, — all whose members have the privilege of being present in the Reichstag, where a special bench is reserved for them. They appear as the representatives of the united governments of Germany, and are entitled to speak whenever they choose; for the Bundesrath is not only a collection of delegates from the governments of the different States, but has also some of the attributes of an imperial cabinet. In form, therefore, interpellations are addressed to the Bundesrath, but in fact they are communicated to the Chancellor, who usually answers them himself, or allows one of his subordinates to do so. A debate may ensue if demanded by fifty members, but it is not followed by an order of the day expressing the opinion of the House,[1] and, indeed, interpellations have no such importance as in France and Italy, because the parliamentary system does not exist; that is, the

[1] Lebon, p. 105; v. Rönne, p. 268. A resolution can, of course, be moved in accordance with the ordinary rules of procedure, and this was done on the occasion of the expulsion of the Poles in Jan., 1886. Blum, pp. 498–501. Dupriez (vol. i. p. 545) comments on the Polish incident.

Chancellor does not resign on an adverse vote of the Reichstag, nor does he feel obliged to conform to its wishes.

The Bundesrath.

Let us now examine more closely the Bundesrath, — that extraordinary mixture of legislative chamber, executive council, court of appeal, and permanent assembly of diplomats. It is the most thoroughly native feature of the German Empire, and has, therefore, a peculiar vitality. The Bundesrath is composed of delegates appointed by the princes of the States and the senates of the Free Cities;[1] and it is to be observed that Alsace-Lorraine, which was taken from France in 1871, is not strictly a member of the union, but only *Reichsland* or imperial territory, and hence has no right to a representative in the Bundesrath, although as a part of the empire it elects members of the Reichstag. Its position is in some ways analogous to that of one of our Territories, while the other parts of the Empire correspond to our States. Curiously enough, Alsace-Lorraine has been allowed since 1879 to send to the Bundesrath delegates who, like the representatives of the Territories in Congress, can debate, but cannot vote.[2]

Its composition.

The seats in the Bundesrath are distributed among the States and Cities in such a way that each of them is entitled to the same number of votes as in the

[1] Const. Arts. 6–10.

[2] Laband, vol. i. pp. 219–20. In the law of 1879, as originally drawn up by Bismarck, Alsace-Lorraine was entitled to ordinary delegates to the Bundesrath; but that body, in order not to increase the seats virtually controlled by the King of Prussia, insisted that they should have no vote. Blum, pp. 635–36. The number of these delegates is four.

diet of the old Germanic Confederation when that body proceeded *in plenum;* except that Bavaria, as part of the inducement to join the Empire, was given six delegates instead of four,[1] and Prussia obtained those of the States she absorbed in 1866.[2]

There are in all fifty-eight members, of which Prussia has seventeen, Bavaria six, Saxony and Wurtemberg four each, Baden and Hesse three each, Brunswick and Mecklenburg-Schwerin two each, and the remaining fourteen States and three Free Cities one each. But Prussia has really three votes more, because the contract for the government of Waldeck already mentioned gave her the vote of that State, and in 1884–85 she caused the Duke of Cumberland to be excluded from the succession in Brunswick, got a Prussian prince appointed perpetual regent, and thus obtained the virtual control of these two votes also;[3] so that she has in reality twenty votes out of the fifty-eight. This, of course, is much less than her proportion of the population;[4] but twenty votes in the same hand count

[1] She had six votes in the Bundesrath of the Zollverein from 1866 to 1871.

[2] Laband, vol. i. p. 220. The votes acquired by Prussia in this way were those of Hanover, 4; Hesse Cassel, 3; Holstein-Lauenburg, 3; Nassau, 2; and Frankfort, 1.

[3] The Duke was excluded because as son and heir of the late King of Hanover he insisted on his right to that kingdom, and refused to acknowledge its incorporation in Prussia. For an account of this transaction, see Blum, p. 489 *et seq.*

[4] The population of Germany on Dec. 1, 1890, was about forty-nine millions, of which Prussia had thirty millions, Bavaria five millions and a half, Saxony three millions and a half, Wurtemberg two millions, Alsace-Lorraine and Baden a million and a half apiece, Hesse one million, and the other nineteen States together four millions.

far more than the same number held by different States, and she has only to win ten additional votes, — those of Bavaria and Wurtemberg, for example, or those of some of the smaller States, — in order to have an absolute majority. In fact, she has usually had her way, although on several notable occasions the other States have combined and defeated her. This happened in 1877, when the seat of the Imperial Court of Appeal was fixed at Leipsic instead of Berlin as she desired;[1] and in 1876 on the more important question of the imperial railroad law. At that time Bismarck refrained altogether from introducing into the Bundesrath a bill for the purchase of railroads by the Empire, knowing that it would be defeated by the opposition of the middle-sized States, although the project was one on which he had set his heart.[2] Again, in 1879, another railroad bill was killed in the Bundesrath by the opposition of Bavaria, Saxony, and Wurtemberg,[3] and in the same year a conference of the finance ministers of the States refused to consent to the tobacco monopoly.[4]

The members of the Bundesrath are diplomats rather than senators.[5] They enjoy at Berlin the privileges of foreign ambassadors, and are appointed and removed

[1] Cf. Blum, pp. 146–47. The vote in favor of Leipsic was thirty to twenty-eight; and it is noteworthy that if Prussia had then controlled the votes of Brunswick the majority would have been the other way.

[2] Cf. Blum, pp. 165–68.

[3] Blum, p. 345.

[4] Blum, p. 312. On this point, however, they yielded some years later.

[5] The constitution (Art. 10) provides that the Emperor shall vouchsafe to them the protection accorded to ambassadors, while the members of the Reichstag have the ordinary privileges of members of a parliament.

at will by the States they represent, — which also pay them or not as they please. The votes they cast are the votes of the States, not those of its representatives, and it is therefore provided that all the delegates of a State must vote alike. In fact, all the votes belonging to a State are counted without reference to the number of delegates actually voting;[1] and thus the seventeen votes of Prussia, for example, can be cast in her name by a single representative, just as at the meeting of a private corporation a properly authorized agent can vote on all the shares of stock belonging to his principal. The delegates, moreover, vote according to the instructions of their home government, and the constitution expressly declares that votes not instructed shall not be counted.[2] This last provision has given rise to some comment. It does not mean that a delegate must produce his instructions before he is allowed to vote. On the contrary, the Bundesrath appears to take no cognizance of instructions, which may, indeed, be of any kind, including an authority to vote as the delegate thinks best; and it is even asserted that a vote is valid whether it is in accord with the instructions or not.[3] The provision in the constitution is probably a mere survival; but it has been suggested that its object is, on the one hand, to allow a delegate to excuse himself from voting on the plea that he has not been instructed, and on the other to make it clear that a vote can be taken, although the delegates have not all received

Character of the Bundesrath and the position of its members.

[1] Laband, vol. i. p. 223.

[2] Const. Art. 7.

[3] Laband, vol. i. p. 229.

their instructions, thus taking away an excuse for delay that might otherwise be urged.[1]

A delegate is usually an officer of the State he represents, often one of its ministers, or even the head of its cabinet, and in any case the ministers of a State are responsible according to its own laws for their instructions to the delegates.[2] In fact, the ministers are frequently questioned in the local Landtag or legislature, about the instructions they have given, or propose to give; and resolutions are sometimes passed in regard to them.[3] If, indeed, the strict parliamentary system existed in any of the German States, the cabinet would no doubt be held responsible to the Landtag for these instructions as for every other act of the government.

Although the delegates are frequently officers of the State they represent, they are not necessarily even citizens of it; and it is not uncommon for several of the smaller States, from motives of economy, to empower the same man to act as delegate for them all jointly. This habit grew to such an extent that in April, 1880, when a stamp act proposed by the Chancellor was seriously amended by a vote of thirty to twenty-eight, thirteen of the smaller States were not represented by any delegates of their own, their votes being cast by two delegates from other States. Bismarck tendered his resignation in disgust, and this

[1] Cf. Robinson, "The German Bundesrath," *Pub. Univ., Pa. Pub. Law Series*, vol. iii. no. 1, pp. 34–35.

[2] Laband, vol. i. pp. 225–27.

[3] Interpellations, for example, were presented and answered in several States in regard to the proposal for the purchase of railroads by the Empire, to which allusion has already been made (Blum, p. 167).

caused the Bundesrath to reconsider its action and vote the tax. But the Chancellor was not satisfied. He complained that the practice of substitution deprived the Bundesrath of the presence of members who were open to argument, and he insisted on the adoption of a rule dividing the session into two periods, in one of which the important matters should be considered, and delegates from all the States should be present, while the other should be devoted to current affairs, when the States might appoint substitutes if they pleased. This rule was adopted, and for the convenience of the delegates the former period is made as short as possible.[1]

The Bundesrath is in its nature unlike any other body in the world, and its peculiarities can be explained only by a reference to the Diet of the old Germanic Confederation. It is not an international conference, because it is part of a constitutional system, and has power to enact laws. On the other hand, it is not a deliberative assembly, because the delegates vote according to instructions from home. It is unlike any other legislative chamber, inasmuch as the members do not enjoy a fixed tenure of office, and are not free to vote according to their personal convictions. Its essential characteristics are that it represents the governments of the States and not their people, and that each State is entitled to a certain number of votes which it may authorize one or more persons to cast in its name, these persons being its agents, whom it may appoint, recall, or instruct at any time. The true conception of

[1] Blum, pp. 348–49; Laband, vol. i. pp. 256–57.

the Bundesrath, therefore, is that of an assembly of the sovereigns of the States, who are not, indeed, actually present, but appear in the persons of their representatives.

The internal organization of the Bundesrath is in accord with its federal character and the privileged position of the larger States. We have already seen that the seventeen votes of Prussia are more than enough to defeat any constitutional amendment, and that she is expressly given a veto on all proposals to change the laws relating to the army or the taxes. Besides this, the constitution declares that the Emperor, that is, the King of Prussia, shall appoint the Chancellor, who presides over the body and arranges its business, and through whose hands all communications from the Reichstag and all motions and petitions must pass,[1] and who is in fact always one of the Prussian delegates.[2] But the constitution goes into much smaller details in regulating privileges of the States, and prescribes even the composition of the committees; for the Germans have shown a remarkable astuteness in this matter, and nowhere else in the world can we find

The internal organization of the Bundesrath.

The committees.

[1] Const. Art. 15. Cf. Robinson, p. 37.

[2] Most of the German jurists argue that the Chancellor must always be a Prussian delegate, because Art. 15 of the constitution implies that he must be a member of the Bundesrath, and the Emperor has power to create such members only in his capacity as King of Prussia. Laband, vol. i. pp. 253–54; Meyer, *Lehrbuch*, § 124; Schulze, vol. ii. p. 91. Hensel (*Die Stellung des Reichskanzlers*, pp. 10–12) denies this and quotes Bismarck in his favor. The Chancellor is authorized to commit the duty of acting as chairman to a substitute, and in fact he rarely presides in person. See Dupriez, vol. i. p. 522, and Blum, p. 143.

the important influence of committees in a legislative body so thoroughly recognized. There are eight standing committees of the Bundesrath established by the constitution.[1] The members of one of these — that on the army and fortresses — are appointed by the Emperor; but it is provided by the constitution that Bavaria, and by military convention that Saxony and Wurtemberg, shall have places upon it. The members of the committee on maritime affairs are also appointed by the Emperor; while the committees on taxes and customs, on trade, on railroads, posts and telegraphs, on justice, and on accounts, are elected every year by the Bundesrath itself. On each of the last seven committees, five States at least must be represented, of which one must always be Prussia, whose member is always the chairman. But here again we have an illustration of the fact that the Bundesrath is an assembly of diplomats and not of senators, for the practice followed by the Emperor or the Bundesrath — whichever has the power of appointment — is to designate the States to be represented, and the delegation from each of those States chooses one of its own members to sit on the committee. The seat on a committee belongs, therefore, not to the representative selected, but to the State which he represents. There is one other committee provided for by the constitution, — that on foreign affairs. Its functions are peculiar; for it does not report like the other committees, but its members listen to the communications made to them by the Chancellor, and express the views of their

[1] Const. Art. 8.

respective governments thereon. It is thus in reality a means by which the ministers of the larger States may be consulted upon foreign affairs; and it consists of representatives of Bavaria, Saxony, Wurtemberg, and two other States designated every year by the Bundesrath. As its only function is to consult with the Chancellor, who is virtually the Prussian minister for foreign affairs, Prussia has no seat upon it, and in her absence Bavaria presides.[1]

Only delegates of the States interested allowed to vote.

Another illustration of the federal character of the Bundesrath is to be found in the provision that on matters not common to the whole Empire, — such, for example, as the excise on beer, from which Bavaria, Wurtemberg, and Baden enjoy an exemption, — only those States which are interested can vote.[2] There was at first a similar provision for the Reichstag, but it was felt to be inconsistent with the spirit of a national house of representatives, and was repealed.[3]

Powers of the Bundesrath.

The powers of the Bundesrath are very extensive, and cover nearly the whole field of government. It is a part of the legislature, and every law requires its assent.[4] But, more

[1] There are also three standing committees not provided for by the constitution: those on Alsace-Lorraine, on the constitution, and on rules. All the standing committees may sit when the Bundesrath is not in session. On the subject of the committees, see Laband, § 31.

[2] Const. Art. 7.

[3] Amend. Feb. 24, 1873.

[4] Including treaties that fall within the domain of legislation, Const. Art. 11. Each State has the right of initiative (Art. 7), which is, of course, most frequently used by Prussia.

than this, it has the first and last word on almost all the laws, for the Reichstag has not succeeded in making its right of initiative in legislation very effective, and by far the larger part of the statutes (as well as the budget) are prepared and first discussed by the Bundesrath. They are then sent to the Reichstag, and if passed by that body, are again submitted to the Bundesrath for approval before they are promulgated by the Emperor.[1] The Bundesrath may therefore be said to be not only a part of the legislature, but the main source of legislation.

Legislative.

It is also a part of the executive. As such, it has power to make regulations for the conduct of the administration, and to issue ordinances for the completion of the laws, so far as this power has not been specially lodged by statute in other hands.[2] In regard to finance its authority is even more extensive, for it has been given many of the functions of a chamber of accounts.[3] It enjoys a share of the power of appointment, for it nominates among other officials the judges of the Imperial Court, and elects the members of the Court of Accounts; while collectors of

Executive.

[1] Laband, vol. i. p. 542; Schulze, vol. ii. p. 118.

[2] Const. Art. 7. It exercises this power with great freedom. Robinson, pp. 50–53. There is some difference of opinion how far this power extends. Laband, vol. i. pp. 236–37; v. Rönne, vol. i. pp. 213–15; Arndt, pp. 115–19. Arndt has also published a treatise on this subject, *Das Verordnungsrecht des Deutschen Reiches*. It is also empowered to decide upon defects that appear in the execution of the laws. Const. Art. 7, § 3. The meaning of this clause has been much discussed. Laband, vol. i. pp. 238–42, 246; v. Rönne, vol. i. pp. 215–16; Arndt, *Verfassung des Deutschen Reiches*, p. 119; Robinson, pp. 56–59.

[3] Laband, vol. i. pp. 244–46.

taxes and consuls can be appointed only with the approbation of its committees.[1] Under this head of executive power must also be classed the provisions by which its consent is required for a declaration of war,[2] for a dissolution of the Reichstag,[3] and for federal execution against a refractory State.[4] The Bundesrath, moreover, acts in some ways like a ministry of state, for it designates one or more of its members to support in the Reichstag the measures it has approved; and in fact a practice has grown up of informing the Reichstag during the progress of a debate what amendments to a bill the Bundesrath is willing to accept.[5] But the federal nature of the Bundesrath comes into play again curiously here, for each of the members also represents in the Reichstag his particular government, and can express its views, although contrary to those of a majority of his colleagues.[6]

Judicial.

The Bundesrath has no little power of a judicial or semi-judicial nature. It decides disputes between the imperial and state governments about the interpretation of imperial statutes.[7] It is virtually a court of appeal in cases where there is a denial of justice by a state court.[8] It decides controversies between States, which are not of the nature

[1] Laband, vol. i. pp. 242–43.

[2] Except on the ground that an attack has been made on the territory of the Empire. Const. Art. 11.

[3] Const. Art. 24.

[4] Const. Art. 19.

[5] Laband, vol. i. p. 537, n. 5.

[6] Const. Art. 9.

[7] This is deduced from Const. Art. 7, § 3. See page 268, note 2, *supra*.

[8] Art. 77.

of private law, if appealed to by one of the parties;[1] and, finally, when a constitutional question arises in a State which has no tribunal empowered to decide it, the Bundesrath must try to settle it by mediation if requested to do so by one of the parties, or if this fails, it must try to dispose of the matter by imperial legislation.[2]

Special privileges of the Bundesrath.

The Bundesrath has not only far more extensive powers than the Reichstag, but it has also certain privileges that enhance its prestige and increase its authority. Thus the Reichstag cannot be summoned to meet without the Bundesrath, whereas the latter can sit alone, and must in fact be called together at any time on the request of one third of its members.[3] Unlike the Reichstag, moreover, the order of business in the Bundesrath is not broken off by the ending of the session, but is continuous, so that matters are taken up again at the point where they were left, and thus its work is made far more effective.[4] The most important privilege it enjoys, however, is that of excluding the public from its meetings.[5] This has given it the

Privacy of meetings.

[1] Const. Art. 76. If unfitted to decide the question, it can substitute for itself some other body, and this it did in 1877 in the case of the controversy between Prussia and Saxony in regard to the Berlin-Dresden railroad, selecting the Court of Appeal of Lübeck. Laband, vol. i. p. 249, note 2.

[2] Const. Art. 76, § 2.

[3] Const. Arts. 13–14.

[4] Laband, vol. i. p. 253.

[5] The constitution does not provide whether the sessions shall be public or not, and in fact they have always been secret (v. Rönne, vol. i. pp. 210–11). A brief report of the matters dealt with and the conclusions

advantage of concealing to some extent its internal differences, and has enabled it to acquire a reputation for greater unanimity, and consequently to exert more influence than it would otherwise possess. Privacy, indeed, would seem to be almost as essential to the Bundesrath, as to the cabinet in a parliamentary government, or to an Anglo-Saxon jury. It is easy to perceive that the twelve jurors would seldom agree, if the public were allowed to witness the mysterious process of reaching a verdict; and it is equally clear that harmony in the Bundesrath would be very seriously imperiled, if its galleries were filled with spectators. One can imagine how the newspapers would gloat over the last altercation between the Chancellor and the representative of Bavaria or Saxony, and how hard it would be for the contending parties to make the concessions necessary to effect an agreement after their differences had been discussed in public. The work of the Bundesrath must be an unending series of compromises, and a compromise is a thing with which the world at large has little sympathy. If, therefore, the meetings of the Bundesrath were open, it would be a hotbed of dissensions between the governments of the different States, instead of a bond of union and a means of mutual understanding.

In regard to the power and influence actually wielded by the Bundesrath, the most contradictory state-

reached is given to the press after each session, but the Bundesrath can vote to withhold from the public all information about any matter, and the rules provide that the oral proceedings both in the Bundesrath and its committees shall be kept secret in all cases. Laband, vol. i. p. 259.

ments are made. It is said on the one hand to be the most important body in the Empire,[1] and on the other that it is a mere nullity which moves almost entirely at the dictation of Prussia.[2] Both these statements are largely true, for considered as an independent council with a will of its own the Bundesrath is a nullity, because it derives its impulse exclusively from outside forces; but, considered as an instrument by means of which the governments of the larger States, and especially of Prussia, rule the nation, it is probably the most important, although the least conspicuous, organ in the Empire. The extent of Prussia's authority in the Bundesrath cannot be accurately determined, owing to the secrecy of the proceedings. That her will, or rather the will of the Chancellor acting in her name, is the chief moving and directing force, is evident; but that he is not influenced by the opinions of the other States, that he does not modify his plans in consequence of their objections, or make compromises with them on contested points, it seems hazardous to assert. The members are usually wise enough not to talk about their differences in public, and hence these are only partly known to the world. At one time the minister of Wurtemberg complained openly in the Reichstag that bills were presented to the Bundesrath drawn up in a complete form by Prussian officials, and filled exclusively with a Prussian spirit;[3] but we know that

Actual influence of the Bundesrath.

[1] Robinson, p. 43.

[2] Lebon, pp. 145–51; Dupriez, vol. i. pp. 478, 517–23.

[3] See Blum, p. 140.

this has not always been the case, and that important measures have frequently been considered and discussed by the ministers of all the larger States before they were introduced at all.[1] We know also that in more than one instance Bismarck found it impossible to persuade the Bundesrath to adopt his views,[2] and that on another occasion he thought a threat of resignation necessary to compel submission.[3] In this case the threat produced the desired result, but it may well be doubted whether it would have the same effect in the mouth of any one but the Iron Chancellor, whose strong will dominated also the Reichstag and the throne.[4]

The Emperor.

We now come to the Emperor.[5] The title seems to denote an hereditary sovereign of the Empire, but from a strictly legal point of view this is not his position. He is simply the King of Prussia, and he enjoys his imperial prerogatives by virtue of his royal office. There is, in fact, no imperial crown, and the right to have her King bear the title, and exercise the functions of Emperor, is really one of the special privileges of Prussia. The language of the constitution is: "The presidency of the union belongs

[1] This was notably true in the case of the *Gerichtsverfassunggesetz* in 1873 (Blum, p. 141).

[2] See page 261, *supra*.

[3] See pages 263–64, *supra*.

[4] Lebon (p. 147) thinks that Prussia has a good deal of influence in the appointment of delegates by the other States, and refers to the case where Bismarck procured the recall of the Bavarian representative in 1880.

[5] Cf. Const. Arts. 11–19.

to the King of Prussia, who bears the title of German Emperor." The succession is therefore determined solely by the law of the Prussian Royal House, and in case of incapacity the Regent of Prussia would, *ipso facto*, exercise the functions of Emperor.[1]

His power as Emperor is comparatively small;

It has been said that as commander-in-chief of the army and navy the Emperor has in theory the personal direction of military matters, but that in all others he acts as the delegate of the confederated governments, under the direction of the Bundesrath;[2] and even if this statement is not strictly accurate, it gives a very fair idea of his prerogatives. He has charge of foreign affairs, makes treaties subject to the limitations already mentioned, and represents the Empire in its relation to other countries, to the States, or to individuals. He declares war with the consent of the Bundesrath, and carries out federal execution against a State when it has been ordered by that body. He summons and adjourns the Chambers, and closes their sessions, and with the consent of the Bundesrath he can dissolve the Reichstag. He promulgates the laws, and executes them so far as their administration is in the hands of the Empire, subject, however, to the important qualification that most of the administrative regulations are made by the Bundesrath. He appoints the Chancellor and all other officers, except in cases where the Bundesrath has been given the right of appointment or confirmation; but it must be remembered that the laws are mainly administered by the state governments under federal super-

[1] Laband, vol. i. pp. 202–4. [2] Lebon, pp. 154–55.

vision, and hence there are comparatively few federal officials to appoint. In short, the executive power of the central government is very limited; and even that limited power is shared by the Bundesrath.

The Emperor has, therefore, very little power as such, except in military and foreign matters. His authority as Emperor, however, is vigorously supplemented by his functions as King of Prussia. Thus as Emperor he has no initiative in legislation;[1] and indeed he is not represented in the Reichstag at all; for the Chancellor, strictly speaking, appears there only as a member of the Bundesrath.[2] But as King of Prussia the Emperor has a complete initiative by means of the Prussian delegates to the Bundesrath whom he appoints. As Emperor he has no veto, but as King he has a very extensive veto,—for it will be remembered that the negative vote of Prussia in the Bundesrath is sufficient to defeat any amendment to the constitution, or any proposal to change the laws relating to the army, the navy, or the taxes. His functions as Emperor and as King are, indeed, so interwoven that it is very difficult to distinguish them. As Emperor he has supreme command of the army and appoints the highest officers. As King of Prussia he

but as King of Prussia it is very great.

The two sets of functions strangely interwoven.

[1] Laband, vol. i. p. 537. Strictly speaking, the initiative in the Bundesrath belongs to the States, and in the Reichstag it is confined to the members. Laband, vol. i. p. 534.

[2] Cf. Lebon, pp. 155–56; Dupriez, vol. i. p. 534. If, as the German jurists maintain, the Chancellor's right to preside in the Bundesrath depends on his being a Prussian delegate, the Emperor, as such, is not represented in the Bundesrath at all. See p. 265, n. 2, *supra*.

appoints the lower officers, and has the general management of the troops over most of Germany. As Emperor he instructs the Chancellor to prepare a bill. As King he instructs him to introduce it into the Bundesrath, and directs how one third of the votes of that body shall be cast. Then the bill is laid before the Reichstag in his name as Emperor,[1] and as King he directs the Chancellor what amendments to accept on behalf of the Bundesrath, or rather in behalf of the Prussian delegation there. After the bill has been passed and become a law, he promulgates it as Emperor, and in most cases administers it in Prussia as King; and finally as Emperor he supervises his own administration as King. This state of things is by no means so confusing to the Germans as might be supposed; for it is not really a case of one man holding two distinct offices, but of the addition of certain imperial functions to the prerogatives of the King of Prussia. The administration of the country is vested in the sovereigns of the States, among whom the King of Prussia is *ex officio* president; and until one has thoroughly mastered this idea, it is impossible to understand the government of Germany.[2]

The Chancellor is the only federal minister.

There is no imperial cabinet, and the only federal minister is the Chancellor, who has subordinates but no colleagues.[3] The reason for this is to be found partly in Bismarck's per

[1] Const. Art. 16.

[2] Schulze (*Preussen*, in Marquardsen, pp. 33–34) remarks that the two offices are so closely bound together that it is impossible to think of them separately.

[3] Laband, vol. i. p. 348; and see § 40.

sonal peculiarities, and partly in the nature of the ties that bind Prussia to the Empire. In the first place, Bismarck preferred to stand alone, and did not want to be hampered by associates. He had had experience enough of the Prussian cabinet, where each of the ministers was very independent in the management of his own department, and he did not care to create for himself a similar situation in imperial matters. After he had decided on a course of action, he hated, as he said, to waste his time and strength in persuading his colleagues, and all their friends and advisers, that his policy was a wise one. Hence he would not hear of an imperial cabinet.[1] In the second place, he did not originally intend to have any federal ministers at all. According to his plan the general supervision and control of the administration was to be exercised by the Bundesrath, while those matters — such as military and foreign affairs — which from their nature must be intrusted to a single man, were to be conducted by the King of Prussia as President of the Confederation, all others being left in the hands of the several States. The Chancellor was to be a purely Prussian officer, who should receive his instructions from the King, and be responsible to him alone.[2] This plan is very interesting, because, although in form it was not accepted, in substance it presents an almost exact picture of the real political situation, except that the power of the Prussian King has become greater than was at first

[1] Cherbuliez, *L'Allemagne Politique*, 2d ed., pp. 228–29. Meyer, in his *Grundzüge des Norddeutschen Bundesrechts* (pp. 88–97), discusses Bismarck's objections to a collegiate ministry.

[2] Lebon, p. 152.

intended.[1] The Liberals objected to it, and under the lead of Bennigsen the constituent Reichstag amended the draft of the constitution, by providing that the acts of the President[2] should be countersigned by the Chancellor, who thereby assumed responsibility for them, — thus making the Chancellor a federal officer responsible to the nation.[3] The principle was excellent, but has remained unfruitful; for the Chancellor is not responsible criminally, and Bismarck refused to hold himself politically responsible to any one but the monarch. He always insisted that the motto "The King reigns but does not govern" had no application to the House of Hohenzollern. In short, the parliamentary system does not exist in the Empire, and the Chancellor is not forced to resign on a hostile vote in the Reichstag. If that body will not pass one of his measures, he gets on as well as he can without it; or, if he considers the matter of vital importance, he causes the Reichstag to be dissolved and takes the chance of a new election, a course which up to this time has always been crowned with success.[4]

He is not politically responsible to the Reichstag.

[1] It is a striking fact that the high imperial officials are almost always selected from among the Prussian functionaries. Lebon, p. 157.

[2] This was in 1867, before the King of Prussia was given the title of Emperor.

[3] Const. Art. 17. Unlike matters of military administration, the acts of the Emperor as commander-in-chief of the army are not treated as requiring a countersignature. Schulze, *Lehrbuch*, p. 93.

[4] I do not mean that no imperial official has ever been driven from office by the Reichstag. The fall of a minister may be occasionally brought about by the opposition of a popular chamber, although there is no general cabinet responsibility.

The Chancellor is at the head of the whole body of federal officials. Besides this he presides in the Bundesrath, and is, in fact, its leading and moving spirit. He also takes an active part in the debates in the Reichstag, where he is the chief representative of the policy of the government. But like his royal master he has a double nature, and his functions are partly imperial and partly Prussian. As Chancellor appointed by the Emperor he is at the head of the national administration, and presides in the Bundesrath; but it is as Prussian delegate that he votes in that body, and indeed his influence there is mainly due to the fact that he speaks in the name of Prussia, and casts as he chooses the twenty votes which she controls. In the Reichstag, on the other hand, he nominally appears as commissioner for the Bundesrath or as one of its Prussian members, while his importance is really due to his position as chief of the federal government. It is obviously essential to the Chancellor's position that he should be the leader of Prussia's delegation in the Bundesrath, and able to direct her imperial policy. For this reason the Chancellor, except for short intermissions, has been also the president of the Prussian cabinet. We shall consider this matter more fully in the chapter which treats of the actual working of the German government.

His functions.

The powers of the German Chancellor in Bismarck's day were greater than those of any other man in the world, and his work and responsibilities were heavier than even his iron frame could

His substitutes.

bear. In order, therefore, to relieve him in part, an act was passed in 1878 providing for the appointment by the Emperor of substitutes, whenever the Chancellor should declare himself prevented from doing his work. These offices were expected at first to be temporary, especially that of Vice-Chancellor, or general substitute, who was intended to act only during the illness of the Chancellor; but with the increase of business they have become a permanent necessity, the Chancellor declaring that he is prevented from doing his work by the fact that he has too much of it to do. For many years there has been a Vice-Chancellor continuously, and it has been the habit to make as many of the Secretaries of State as possible special substitutes for their own departments,[1] appointing them at the same time Prussian delegates to the Bundesrath, in order that they may be able to speak both in that body and in the Reichstag.[2] The substitutes countersign the acts of the Emperor in the Chancellor's stead, but are nevertheless subject to his orders, and thus he still remains sole head of the government, and is morally responsible for its whole policy.[3]

[1] Dupriez, vol. i. pp. 495–97. The substitution can be made only for those matters which the Empire administers directly. Dupriez, *Ib.*; Laband, vol. i. p. 358.

[2] Dupriez, vol. i. p. 522.

[3] Laband, vol. i. p. 359; Dupriez, vol. i. pp. 497–99. The federal administration began in a very simple form, for there was only one chancery office (*Bundeskanzleramt*), divided into three sections, the Prussian officials doing in some departments a good deal of federal work. But as the number of affairs to be attended to has grown, the federal machinery has become more elaborate. The general chancery office has disappeared, and there are now many separate departments, each with a secre-

The judicial branch of the imperial government remains to be considered. Justice is administered in the first instance by the state courts; but curiously enough, the organization of these courts is regulated by imperial statutes.[1] Their rules of practice are also derived from the same source, for the federal government has enacted general codes of civil and criminal procedure, which apply to the state tribunals.[2] It has, moreover, enacted a universal criminal code and a commercial code, and has just added to these a general code of civil law; so that there are in each State a similar series of courts organized on an imperial plan and expounding imperial laws in accordance with imperial forms of procedure, but whose members are appointed by the local sovereign and render their decisions in his name.

The judiciary.

Apart from administrative and consular courts, there is only one federal tribunal, called the *Reichsgericht*, or Court of the Empire. It has original jurisdiction in cases of treason against the Empire, and appellate jurisdiction from the federal consular courts, and from the state courts on questions of imperial law.[3] It is to be observed, therefore, that

The Reichsgericht.

tary of state, or president of a bureau, at its head. Such are the Interior, Foreign Affairs, Navy, Post Office, Justice, Treasury, Railroads, Invalid Funds, Debt Commission, and Imperial Bank. Laband, § 41.

[1] The *Gerichtsverfassunggesetz* of Jan. 27, 1877. Laband, § 86, and see § 81. This is true only of the ordinary courts of law, the subject of administrative courts being left for the most part in the discretion of the several States. See Laband, vol. ii. p. 368.

[2] The *Civilprozessordnung* of Jan. 30, 1877. The *Strafprozessordnung* of Feb. 1, 1877.

[3] Laband, § 84.

with the completion of the system of national codes this year, the imperial tribunal has become a general court of error in all cases arising under the ordinary civil or criminal law.[1]

Power of the courts to hold statutes unconstitutional.

While speaking of the judicial branch of the government, it is interesting to notice that there has been a great deal of discussion among German publicists over the question whether a court of law can inquire into the constitutionality of a statute. Some writers maintain that it can do so,[2] while others insist that the promulgation by the Emperor settles conclusively the validity of a law.[3] The problem is not, of course, confined to the Empire, but may arise in the States whenever a legislature passes a law that violates the state constitution; the solution depending ultimately on the question whether

[1] A State which has several courts of error can create a supreme court of appeal and confer upon it the appellate civil jurisdiction of the Reichsgericht, but this has been done by Bavaria alone. Laband, vol. ii. pp. 365–66.

[2] v. Rönne, vol. ii. pp. 62–63. This was maintained as a general principle by Robert von Mohl, in his *Staatsrecht, Völkerrecht u. Politik* (1860), I. 3.

[3] *E. g.* Laband, vol. i. pp. 551–58; Zorn, *Staatsrecht des Deutschen Reiches*, § 7, iii. Gneist, who is commonly cited in favor of the authority of the court, came to the conclusion, in his *Soll der Richter auch über die Frage zu befinden haben, ob ein Gesetz verfassungsmässig zu Stande gekommen*, that the courts can decide whether an ordinance issued by the executive is within its constitutional powers, and whether a law has received the assent of the chambers as required by the constitution, but that they cannot inquire whether the substance of a law passed in proper form violates the provisions of that instrument.

The constitution of Prussia declares expressly (Art. 106) that statutes and ordinances are binding if promulgated in the form prescribed by law, and that the legality of royal ordinances regularly issued can be examined only by the chambers.

the constitution shall be treated as a law of superior obligation, or whether it shall be regarded merely as establishing a rule for the guidance of the legislator.

The matter, however, is one in which practice is far more important than abstract theory, and it is certain that the courts have not in fact exercised any general power of refusing to apply statutes on constitutional grounds. The late Brinton Coxe, in the recent work on "Judicial Power and Unconstitutional Legislation," has collected the most important German cases on the subject.[1] In one of these the Hanseatic Court of Appeal held in 1875 that a statute enacted in Bremen, which deprived a person of property without compensation, was in conflict with the constitution of the city, and that the court must regard the latter as a binding law and refuse to apply the statute.[2] Eight years later the doctrine of this case was expressly overruled by the federal court in another suit that arose in Bremen upon a similar state of facts, the court declaring that the constitutional provision was to be understood only as a rule for the legislative power to interpret.[3] Since that time no German tribunal appears to have held a statute unconstitutional, but in 1889 the federal court remarked, in the course of an opinion, that the question whether the judiciary had a right to examine the constitutionality of an imperial law was still an open one, although the weight of authority was in the affirmative.[4]

[1] Ch. ix.

[2] Gabade *v.* Bremen, Seuff, *Arch.*, vol. xxxii. No. 101.

[3] K. and Others *v.* Dyke Board of Niedervieland, Dec. of the Reichsgericht, vol. ix. p. 233.

[4] Dec. of the Reichsgericht, vol. xxiv. p. 3.

As the question is the same for imperial and state laws, the remark would seem to imply a change of opinion on the part of the court. It is not at all likely, however, that the Reichsgericht will have the courage of its convictions, and venture to disregard statutes passed by the legislature of the Empire.

Even in a federal system such a power could be effectively used only where the central government was exceedingly weak,[1] or where the authority of the courts had been raised to a pitch like that which it has acquired in Anglo-Saxon countries from the prolonged judicial centralization of England. It would, indeed, seem absurd to draw a distinction between public and private law, as is commonly done in Germany, and deny to the courts the right to consider the legality of an administrative ordinance on the ground that it falls into the province of public law, and at the same time give them power to pass on the validity of a statute enacted by the legislature.

Character of the German federal system.

To sum up what has been said, the German Empire is a federal government of a peculiar type, in which legislative centralization is combined with administrative decentralization. The centre of gravity is to be found in the body representing the governments of the several States, and here Prussia has a controlling influence, and a veto on the most important matters. In fact, the Confederation is not a union of States with equal rights, but rather an association of privileged members, so

[1] That the courts cannot exercise such a power in a centralized State, see the writer's *Essays on Government*, pp. 40–45.

contrived that Prussia has the general management, subject only to a limited restraint by her associates. And herein there is a marked contrast between the American and German federal systems. That of the United States is based on the equality of the members; and a decided preponderance on the part of any one State would destroy the character of the union. That of Germany, on the contrary, is organized on a plan that can work successfully only in case one member is strong enough to take the lead, and keep the main guidance in its own hands;[1] for if the States were nearly equal, their mutual jealousy would effectually prevent the sovereign of any one of them from infusing a real vitality into the office of Emperor, while the control of the Bundesrath over the administration would paralyze the executive unless that body derived its impulse from a single source.

[1] Cf. Dupriez, vol. i. pp. 475–77.

CHAPTER VI.

GERMANY: PRUSSIA AND THE SMALLER STATES.

The government of the Empire cannot be understood without a knowledge of Prussian institutions.

THE preponderating influence of Prussia in the German Empire makes a knowledge of her institutions necessary for a thorough comprehension of the imperial system, and therefore a sketch of the Prussian government must precede any general discussion of German politics.[1]

The Prussian constitution.

The present constitution of Prussia, which dates from January 31, 1850, was granted by the King after the revolutionary movement of 1848 had begun to subside, and is far less democratic than the Liberals would have liked.[2] In some ways it is even less liberal than the text would lead one to suppose; for although it contains quite an elaborate bill of rights, Professor Gneist spoke of it as a *lex imperfecta*, owing to the absence of machinery for giving effect to its provisions.[3] It purports, for

[1] The area of Prussia is 134,463 square miles out of a total of 208,670 for the whole Empire, while her population by the census of Dec. 1, 1890, was 29,957,367 out of 49,428,470.

[2] Dupriez (vol. i. pp. 349–50), after pointing out that the constitution of Prussia is largely copied from that of Belgium, remarks that the latter rests on the sovereignty of the nation, while the former is based on the sovereignty of the king.

[3] *Soll der Richter*, 3d ed. p. 20.

example, to guarantee the liberty of instruction;[1] but as no statute has been passed to carry this out, the previous laws remain in force, whereby no school can be opened without permission from the government.[2] Again, it declares that the right to assemble without arms, except in the open air, shall be free;[3] but in fact notice of every meeting held to discuss public affairs must be given to the police, who have a right to be present, and a very extensive power of breaking it up.[4] The result of such a state of things is that neither the parliament nor the citizens have sufficient means of defending their rights; and although the recent increase of local self-government and the establishment of administrative justice have done something towards remedying this defect,[5] personal and political liberty are still far from enjoying the same protection as in Anglo-Saxon countries. The constitution was clearly not intended as a restraint on legislation, for it can be changed by a simple majority vote of both chambers, sanctioned by the King; the procedure in such a case differing from the ordinary process of enacting a statute only in the fact that there must be two separate votes, between which an interval of twenty-one days must elapse.[6]

[1] Const. Art. 22. Cf. Arts. 26 and 112.

[2] v. Rönne, *Das Staatsrecht der Preussischen Monarchie*, 4th ed. § 169; and see Schulze, *Preussen*, in Marquardsen, p. 123.

[3] Const. Art. 29. Cf. Art. 30.

[4] v. Rönne, *Ib.*, § 145 (and see p. 193, note 8, p. 194, note 1).

[5] Schulze, p. 32.

[6] Const. Art. 107; v. Rönne, § 158. Amendments have in fact been made on more than a dozen different occasions.

The King.

At the head of the state is the King, whose crown is hereditary according to the principles of the Salic law, that is, it can be inherited only by and through males.[1] Every statute requires his consent, as well as that of the chambers,[2] and he appoints directly or indirectly all the officers of the state.[3] He has power also to confer titles of nobility, — a prerogative, by the way, that as Emperor he does not possess.[4] The civil list, which is granted not for the life of the monarch as in England, but in perpetuity, is absolutely at his disposal, and out of it he is expected to provide for all the members of the royal family; and in this connection it is worth while to observe, as an illustration of the relation of the imperial office to the royal one, that the Emperor as such has no civil list, and that there is no imperial household, with its chamberlain, its marshal, and so forth, all these high dignitaries being officers of the Prussian court.[5]

The ministers.

The constitution declares that all the acts of the King must be countersigned by a minister, who thereby becomes responsible for them;[6]

[1] Const. Art. 53; Schulze, pp. 47–50.

[2] Const. Art. 62. As a matter of fact he does not need to withhold his consent, because he can always get the Peers to reject a Liberal bill, but no one doubts that he would withhold it in case of need. (Cf. Dupriez, vol. i. p. 409.)

[3] See Const. Arts. 45–47; v. Rönne, § 99.

[4] Schulze, p. 45.

[5] *Id.*, p. 47.

[6] Const. Art. 44. In practice the countersignature of a minister is not required, for orders to the army issued by the king as commander-in-chief, for ordinances concerning the administration of the Evangelical church, of which the king is the head, for the conferring of decorations

but as the ministers are in reality responsible only to the King himself, this provision does not diminish the royal authority. The ministers and their substitutes have, indeed, a right to appear in either chamber, where they enjoy the privilege of speaking as often as they please, although the members themselves do not. They must even be given the floor at any time they ask for it, unless a member is actually addressing the house,[1] and in fact they take a very active part in the debates;[2] but they do not resign on an adverse vote, and are not responsible in the parliamentary sense of the term. They are, in short, the servants, not of the chambers, but of the crown, a fact that finds its outward expression in the frequency with which they refer to the personal opinions of the King.[3] Nor are they subject to an effective control of any kind on the part of the legislature, for although the constitution provides that they can be prosecuted for bribery, treason, or violation of the constitution, upon a resolution passed by either house,[4] there is no statute prescribing any penalties, and hence the provision is a dead letter.[5] A real restraint on the ministers is, how-

Their responsibility.

and titles, or for addresses to the chambers. v. Rönne, vol. i. p. 418; Meyer, *Lehrbuch*, p. 187.

[1] Const. Art. 60; v. Rönne, § 73 and notes.

[2] Dupriez, vol. i. pp. 401, 407.

[3] Dupriez, vol. i. p. 401. The royal rescript of Jan. 4, 1882, insists on the right of the king to direct personally the politics of his government. Cf. Blum, p. 479.

[4] Const. Art. 61.

[5] v. Rönne, vol. ii. pp. 356–59; Schulze, pp. 42–43. In France, curiously enough, a similar provision is held to authorize the High Court to

ever, supplied by the Chamber of Accounts (*Oberrechnungskammer*), which is independent of them, inasmuch as its members are protected from removal like the judges. This body examines all the finances, and reports to the Landtag;[1] but if a minister has exceeded the appropriations and the Landtag refuses to vote a supplementary credit to cover the amount, there is no way of holding him legally responsible for it.[2] This restraint, therefore, while very important morally, has no legal sanction.

Their independence of each other.

One of the most marked peculiarities of the Prussian ministers is their lack of cohesion. There is, indeed, a Minister President, but he has no authority over his colleagues and cannot compel them to adopt his views. There is also a ministry of state (*Staatsministerium*) composed of all the ministers sitting together; but this body bears very little resemblance to the cabinet in England or France. It has power, when the public safety requires it or unusual distress prevails, and the Landtag is not in session, to make temporary laws in the form of royal ordinances, which are binding until the Landtag next assembles, when they must be submitted to it for approval.[3] Its consent is necessary, moreover, in certain other matters, and notably for proclaiming the state of siege, which

impose any penalty it sees fit. Lebon, *Frankreich*, in Marquardsen, pp. 55–58.

[1] This body was also made the Chamber of Accounts for the Empire; the Bundesrath being empowered to appoint additional members. Schulze, pp. 73–74.

[2] v. Rönne, vol. ii. p. 353, note 6; Schulze, p. 112.

[3] Const. Art. 63; v. Rönne, vol. iii. p. 77; Schulze, pp. 71–72.

involves a temporary suspension of personal liberty in the places to which it applies;[1] but except for these special cases where the ministers are obliged by law to act together, they are in the habit of administering their several departments without much regard to each other's opinions. Ordinances of 1814 and 1817 provide, it is true, that the ministry of state shall meet once a week, and that all matters of general importance shall be referred to it,[2] but this statute has not united the members because the decisions of the majority do not bind the minority, their effect being simply that of advice to the King.[3] The result is that the ministers are far more independent of each other than in most countries, often differing widely in their political tendencies.[4] In seeking an explanation of this fact we may observe that the parliamentary system does not exist, and hence the ministers not being jointly responsible for the whole conduct of the administration, are not compelled to hold together and support one another. Their responsibility is only to the King, and there is no reason why he should dismiss them all because he is dissatisfied with one of them. He selects them for their administrative qualities rather than their political opinions, and requires of them administrative capacity and obedience to himself.[5] The ministers, therefore, stand each on his own feet, or as the lawyers say in a

[1] v. Rönne, *Ib.*; Schulze, *Ib.*
[2] v. Rönne, vol. iii. pp. 75–76; Schulze, p. 71.
[3] Cf. Dupriez, vol. i. pp. 367–71.
[4] Cf. *Id.*, vol. i. pp. 361, 363.
[5] *Id.*, vol. i. pp. 359–60.

deed of trust, they are liable each for his own acts and defaults, and not one for those of the others.

Organization of the departments.

The number of the ministers, their functions, and the arrangement of their staff of officials are regulated by the King at his pleasure, subject only to the vote of the necessary appropriations for salaries by the Landtag; and it is no doubt partly for this reason that the organization of the several departments is not uniform or based on any systematic plan, but has developed according to the needs of each case. There are at present nine ministers: those for Foreign Affairs;[1] Interior; Trade and Commerce; Public Works; Agriculture, Domains, and Forests; Religion, Education, and Medicine; Justice; Finance; and War; to which must be added as forming part of the ministry of state the Imperial Secretaries of State for the Interior and Foreign Affairs.[2]

[1] The Minister for Foreign Affairs is also, of course, the Chancellor of the Empire.

[2] Schulze, p. 62 *et seq.*; Dupriez, vol. i. p. 448 *et seq.* There is also a *Staatsrath*, or Council of State, which in composition resembles somewhat the English Privy Council. It deserves mention for its insignificance rather than its importance, for in fact it amounts to nothing. (v. Rönne, vol. iii. pp. 73–75; Schulze, pp. 72–73.) In 1884 Bismarck tried to give it new life by intrusting it with the consideration of bills to be submitted to the Bundesrath, but after a few days of activity it relapsed into its dormant condition. (Lebon, pp. 211–13.) Another body with analogous functions is the *Volkswirthschaftrath* created by royal ordinance in 1880 and composed of thirty members appointed by the King, and forty-five more selected by him from a number twice as large nominated by the Chambers of Commerce and Trade and the Agricultural Associations. It considers and gives advice upon all bills affecting trade and agriculture. (Schulze, p. 67.) This was one of Bismarck's pet institutions, but was not generally popular. (See Blum, pp. 353–54.)

Subordinate to the ministers is the bureaucracy, which is certainly one of the most efficient bodies of officials in the world. Its members are intelligent, honest, and active, and although somewhat rigid and autocratic, do not appear to be excessively tied down by routine. Nor is the administrative system in its actual working highly concentrated as compared with those of other continental nations, for the officials do not feel obliged to refer every important question to their superiors, but are willing to act on their own responsibility within their spheres of duty. An apprenticeship and examination are required for admission,[1] and a severe discipline is maintained by means of special tribunals composed of administrative officers, whose consent is required for the dismissal without a pension of any permanent member of the civil service.[2] These conditions explain the existence of a dictatorial power on the part of the officials, and a constant interference in the affairs of every-day life, which under a system of favoritism and spoils would be well-nigh intolerable. Not that the service is strictly non-partisan, for the government does not give offices to its political enemies, but neither the deputies nor the parties have any control over appointments, and

The bureaucracy.

[1] The upper and lower administrative services are kept distinct, different qualifications and separate examinations being required for each branch. v. Rönne, § 256.

[2] *Id.*, §§ 251, 260, 264. The *Disciplinarhof* (which has jurisdiction over officials appointed by the King or the ministers, and must be consulted in cases of appeals by other officials) contains in addition to the administrative members at least four judges of the Court of Appeals, all the members being appointed for three years. *Id.*, vol. iii. p. 387.

hence the bureaucracy, though at times actively used to influence elections,[1] does not degenerate into the creature or the tool of party.

Administrative justice in Prussia.

Notwithstanding the excellent organization of the bureaucracy, its enormous power could hardly be endured without the restraint exercised by the administrative courts. Before the present century the elaborate system of administrative appeals, and the permanence of traditions that prevailed in the bureaucracy, many of whom were learned in the law, preserved a great uniformity in the administration, and furnished a real guarantee against arbitrary conduct on the part of the officials. But with the spread of new ideas after the French Revolution, a marked change took place. The sharp distinction drawn between justice and administration deprived administrative procedure of its judicial character, and made the decisions of the officials turn less on law and more on expediency. By an ordinance of 1808 the officers of the government were, indeed, subjected to the ordinary tribunals in certain specified cases, which came to be known by the curious name of *Enklaven*, or oases of justice; but except to this limited extent the officials enjoyed an entire immunity from judicial control. Moreover, the torpid old bureaucratic system, with its delays and its conservatism, offered a serious hindrance to the reforms planned by Stein and Hardenberg. They needed and created a more elastic form of government

[1] Cf. Dupriez, vol. i. pp. 446–48. This caused a great deal of complaint and aroused much discussion after the elections to the Reichstag in 1881. Blum, pp. 478–81.

in which an impulse could make itself quickly and decisively felt from a central point, not dreaming for a moment that the vast discretionary power they gave to the officials, and especially to the ministers, would ever be abused for party purposes. But in fact the system they introduced was adapted only to the rule of a benevolent autocrat, and its defects became manifest after the outbreak of 1848 had given rise to a parliament.

In 1850 the Conservatives, or rather the landowners, who formed the ruling element in the party, came into power, and made a free use of their vast public authority to help their partisans. The confirmation of local officials, the granting of passports, of building permits, and of licenses for hotels and saloons, and even the direction of the police at Berlin, were employed as a means of influencing elections. The evil continued unabated for eight years, when William became Regent and put a stop to it; but before any permanent remedy could be applied the conflict with the Parliament broke out, and the reform was postponed till after the Franco-Prussian war. Then at last a series of administrative tribunals was established in connection with the new scheme of local government, and the result has been a return of confidence in the justice of the bureaucracy without serious detriment to its energy.[1]

The administrative courts in Prussia are more inde-

[1] Cf. Gneist, *Das Englische Verwaltungsrecht*, 3d ed. pp. 367–72, 413–21; *Zur Verwaltungsreform in Preussen*, pp. 1–53; "Les Réformes Administratives en Prusse," *Revue Gen. du Droit et des Sciences Pol.*, Oct. 1, 1886; Schulze, pp. 153–65; Goodnow, book vi. div. ii. ch. vii.

pendent of the government, and hence in a better position to control the officials than in France; for in the lower ones a majority of the members are private citizens chosen by the local representative assemblies and serving without pay;[1] while the highest, the so-called *Oberverwaltungsgericht*, is composed of men appointed by the King for life, and protected like the ordinary judges, so that they can neither be removed, suspended, nor transferred without the approval of a judicial tribunal. The whole subject of administrative justice as a branch of positive law is still in its infancy, and is liable to undergo grave modifications. From this point of view the independent position of the members of the Prussian Oberverwaltungsgericht, and their consequent separation from the mass of government officials, is likely to have important results. Every judicial body has a natural tendency to follow precedents, and hence to develop fixed rules of decision. If this has been true of the judicial section of the French Council of State whose members are removable, it will, no doubt, be even more true of the Prussian court. It is probable, therefore, that alongside of the ordinary civil law there will grow up in Germany an equally logical and equally inflexible administrative law, which will control the officials as effectually as the common law does in Anglo-Saxon countries. It is not improbable also that the inconvenience of two sys-

The administrative courts.

Their possible development.

[1] There are two sets of these courts, the *Bezirksausschüsse* and the *Kreisausschüsse*, which will be described under the head of local government in the subsequent part of this chapter.

tems of law enforced by separate courts will in time bring about a fusion of the two in the same way that the English common law and equity are tending to become fused; and if this happens, the government officers will lose their peculiar privileges and become in the end subject to the same tribunals as the rest of the community. From an Anglo-Saxon standpoint such a result is certainly desirable, but it must be observed that the Germans prefer their own system to the English, on the ground that the administrative courts are inclined to take a broader view of public interests than the ordinary judges, who are constantly occupied with questions of private law.[1] If this is an advantage, it applies with especial force to the lower courts, whose members are actively engaged in the work of administration.

The Landtag.

The legislative power in Prussia is vested in the King and the *Landtag*, or Diet. The latter consists of two houses, which always sit separately, unless the King becomes insane, or the crown passes to an infant, when they meet in joint session to vote the need of a regency, and to appoint a regent in case the King has no male relative who is entitled under the constitution to occupy that position.[2] The Landtag must be summoned to meet at least once every year, and cannot be adjourned for more than thirty days, or more than once in a session, without its own

[1] *E. g.* Gneist, *Der Rechtsstaat*, 2d ed., pp. 269–74; v. Rönne, vol. ii. p. 331. The same view is expressed by Goodnow, vol. i. pp. 9–14.

[2] Const. Arts. 56 and 57.

consent.[1] These privileges, however, are not as important as they seem, because the King can close the session at any time and can dissolve the lower house. In the latter case there is, indeed, a provision requiring that elections shall be held within sixty days, and the new Landtag called together within three months,[2] but the power of dissolution is unlimited, and it has happened several times, when the elections have been unfavorable to the government, that the new Landtag has been dissolved before it met.[3]

Its legislative power.

The powers of the Landtag of a strictly legislative character are on their face decidedly broad. All laws require its consent,[4] and so do the taxes, the loans, and the yearly budget.[5] But, as we have already seen, the right to vote the appropriations has once been virtually suspended.[6] This was during the period of conflict with the crown which preceded the war with Austria, and although since that time no attempt has been made to spend money without the consent of the Landtag, the constitutional question has never been definitely settled. Most of the Prussian jurists still teach the doctrine that the popular Chamber, not having power alone to repeal a law, has no right to

[1] Const. Arts. 76 and 52. The two houses must be summoned and adjourned at the same time. *Id.*, Art. 77.

[2] Const. Art. 51.

[3] Schulze, p. 61.

[4] Const. Art. 62. Except in case of urgency when it is not in session. Art. 63.

[5] Arts. 99, 100, 103. The budget in Prussia is really the work of the government, that is, the reductions made by the Landtag are unimportant and an increase is rare. Dupriez, vol. i. p. 418.

[6] See page 239, *supra*.

bring about the same result by refusing the money required for its execution; and that in case of a disagreement between the different powers in the state the King has a right to carry on the government in accordance with the standing laws, and make the expenditures necessary for that purpose.[1] Hence it would be rash to assert that if another serious conflict with the crown should arise, Bismarck's practice would not be revived.

The Landtag has the right to initiate legislation,[2] but this is not much used, and in fact the bulk of the bills introduced, and almost all those that are enacted, are proposed by the government.[3] In regard to their own bills, moreover, the ministers are not so much afraid of rejection as they are of serious amendments,[4] and hence we may fairly say that the chief activity of the Landtag consists in the consideration and amendment of measures submitted by the crown.

Its control over the administration.

The control of the Landtag over the administration is very slight. It can appoint commissions to make investigations,[5] but the government can forbid the officials to give them any information, and in fact the ministers have insisted that such commissions, like all the committees of the Landtag,

[1] Cf. Schulze, pp. 102–4; Gneist, *Die Militärvorlage von 1892 und der Preussische Verfassungskonflikt.* The authorities are collected and discussed by Laband, vol. ii. pp. 993–95, 1037, *et seq.*; v. Rönne (§ 118) is of the contrary opinion. Compare, in this connection, Const. Arts. 100, 109.

[2] Const. Art. 64.

[3] Dupriez, vol. i. pp. 404, 405–6.

[4] *Id.*, pp. 407–8.

[5] Const. Art. 82.

shall hold no direct communications with any officers but themselves.[1] It can require the presence of the ministers and ask them questions,[2] but they may answer or not as they please.[3] It can address interpellations to the government, but as the parliamentary system does not exist in Prussia these have not the same importance as in France and Italy. Each chamber can also present addresses to the King,[4] who may pay attention to them or not, as he thinks best. In short, the influence of the Landtag over the administration is confined to expressing an opinion which is not likely to have any great effect.

The procedure.

Each house elects its own President, and makes its own rules,[5] the forms of procedure being very much like those of the Reichstag, for which, indeed, they served as a pattern.[6] The houses are divided in the same way into *Abtheilungen*, or sections, whose only duties are the choice of committees, and in the lower house the preliminary examination of elections.[7] There is also the same jealousy of

[1] v. Rönne, vol. i. pp. 294–96.

[2] Const. Arts. 60 and 81.

[3] Schulze, p. 59.

[4] Const. Art. 81.

[5] Const. Art. 78.

[6] Cf. Lebon, p. 207.

[7] v. Rönne, vol. i. pp. 331-34; Schulze, p. 59; Dupriez, vol. i. pp. 389–90. In the House of Peers there are five sections; in the House of Representatives, seven. The sections differ from the French Bureaux in two respects. Instead of being renewed every month, they last during the whole session, and while in the lower house the division is made as in France by lot, in the Peers it is made by the President. A section is not obliged to select its representatives on a committee among its own members.

the power of committees, for the ministers realize that an amendment proposed by a committee has a better chance of being adopted than one moved from the floor. Hence they prefer to have their measures considered directly by the whole house, and a reference to a committee is so far from being a matter of course that a motion to that effect is beginning to be looked upon as a sign of hostility to the bill.[1]

The House of Peers.

Curiously enough, the constitution does not prescribe the composition of the *Herrenhaus*, or House of Peers, but delegates the power to do so to the King, only providing that the members shall be appointed by the crown in heredity or for life, and that a royal ordinance on the subject once issued shall not be changed without the consent of the Landtag.[2] By the ordinance of October 12, 1854, which is still in force, the house consists first of princes of the blood royal summoned by the King; then of hereditary nobles whose ancestors were formerly independent princes of the Holy Roman Empire, and of hereditary members created at will by the crown; then of life-members, four of whom are the holders of certain great offices of state or of the household, while others are appointed by the King at his pleasure, and others again are appointed by him on the nomination of the larger landowners, of the universities, of evangelical bodies, and of certain cities.[3] The members

[1] Dupriez, vol. i. pp. 407–8. There are in each house eight standing committees, all the others being specially appointed to consider particular measures. v. Rönne, *ubi supra*.

[2] Const. Arts. 65–68, as amended May 7, 1853.

[3] Schulze, pp. 52–53. The constitutionality of some of these provisions

appointed at will by the King are not limited in number like the rest, and hence the crown by a creation of peers can control the house at any time. At present, however, the total number of members is about three hundred, of whom more than one third are hereditary nobles possessing large estates, while another third are nominated by the landowners, so that the house is really controlled by the landed gentry.[1] Now this class has strongly marked characteristics in Prussia, and is widely separated from the rest of the people. It is devotedly loyal to the throne, and at the same time extremely conservative and very jealous of its rights. It can always be relied upon, therefore, to support the crown against any attempt at innovation on the part of the more popular house, and to refuse its consent to progressive measures, which the representatives of the people have passed, and the King does not want to sanction. But it is by no means equally ready to follow the crown in a liberal policy; and this it showed in 1872, when it rejected the bill for the reform of local self-government which Bismarck had determined to enact, and was chastised by the appointment of twenty-four new members.

Except for the fact that the budget and all money bills must be presented first to the lower house and must be accepted or rejected as a whole by the Peers,[2]

has been seriously questioned on the ground that many of the life-members are not really appointed for life, but keep their seats only so long as they retain the qualifications on which their appointment was based. v. Rönne, vol. i. pp. 205, note 7, 215, note 1.

[1] Lebon, p. 191.

[2] Const. Art. 62.

the powers of the two houses are identical; and in fact the Peers exercise their power of amendment with a good deal of freedom and no little effect.

The House of Representatives.

The *Abgeordnetenhaus*, or House of Representatives, has an organization nearly as singular as that of the Peers.[1] It is composed of four hundred and thirty-three members elected for five years[2] by a suffrage, which although universal[3] is neither direct nor equal. The members are chosen in districts, each of which elects, as a rule, two deputies, but frequently only one, and sometimes as many as three.[4] The members, however, are not chosen by the people, but by electors, and for this purpose the districts are subdivided into a number of smaller divisions called *Urwahlbezirke*, or original electoral districts, in each of which one elector is chosen for every two hundred and fifty souls, on the following curious system. The voters are divided into

The three-class system of election.

[1] See Const. Arts. 69–74, as amended in 1851, 1867, 1876, and 1888; Schulze, pp. 53-54; v. Rönne, §§ 57-60, and the annotated translation of the constitution by J. H. Robinson, published by the Am. Acad. of Pol. and Soc. Science. The constitution provides (Art. 115) that until an electoral law is enacted the election of deputies shall be regulated by the royal ordinance of May 30, 1849. No such law has ever been passed, but this ordinance with its amendments is nearly identical with the provisions of the constitution.

[2] The term was originally three years, but like that of the Reichstag, it was changed to five years in 1888.

[3] The franchise extends to all Prussians twenty-four years old, and not disqualified by crime, pauperism, etc. The constitution says twenty-five years old, but the ordinance says twenty-four.

[4] The districts have not been changed since 1860, and are now very unequal. Berlin, for example, with about one twentieth of the whole population, elects only nine representatives.

three classes according to the amount of taxes they pay; the largest tax-payers who together pay one third of the taxes forming the first class; the next largest tax-payers paying another third of the taxes forming the second class; and the rest of the people who pay of course the remaining third forming the third class. Each of these classes chooses separately, and by absolute majority vote, one third of the electors to which the *Urwahlbezirk* is entitled.[1] All the electors so chosen in the district then meet together and elect the representative by absolute majority vote.[2] The system has another strange feature. The electors retain their functions during the whole term of the Landtag, so that when a seat in the house becomes vacant, the people do not proceed to a new election, but the old electors are called together again to choose another representative. The result is that a by-election involves a fresh appeal, not to the constituents, but only to the electors, and these are not likely to have changed their party affiliations.

The three-class system of election was devised in 1849, and is a singular compromise between universal suffrage and property qualification. Under it everybody votes, and has a certain share in the direction of

[1] If after dividing the number of electors by three there is one elector left over, he is chosen by the second class. If two are left over they are chosen by the first and third classes.

[2] Any Prussian thirty years old, who is not a peer or disqualified from being a voter, is eligible, and may be chosen in any district without regard to residence or official position, but a member loses his seat by accepting any paid office or any official promotion. Const. Arts. 74 and 78.

public affairs; but the largest tax-payers, that is, the richest men, who are, of course, comparatively few in number, choose as many electors as the great mass of laborers, or to put the same thing from the opposite point of view, property and the bearing of the public burdens, as well as mere numbers, are taken into account in the apportionment of power. The same principle is applied in the Prussian cities and villages, where the councils are divided into three equal parts, one of which is elected by each of the three classes of tax-payers.

Its effects.

In municipal government the system appears to have the good effect of making the administration of the city a matter of business rather than of politics; but as applied to the legislature it assumes a somewhat different aspect, for there is a strong feeling that a representative body elected on such a plan does not really express the opinion of the nation, and this feeling deters a good many people from voting, especially among the Social Democrats of the large cities. The system has been praised even by foreigners on the ground that it is an attempt to represent social interests instead of geographical districts,[1] and this is becoming a favorite point of view with certain thinkers; but it may well be doubted whether in a democracy a political organization of the different classes is desirable. The obvious result is to make party lines coincide with social distinctions; to array the different classes in separate groups; and to accentuate the antagonism between rich and poor. This evil, from

[1] Cf. Prins, *La Démocratie et le Régime Parlementaire*, chap. x.

which Germany suffers in a peculiar degree, will be referred to at greater length in the following chapter on the actual working of parties in that country.

Its effect on parties.

Curiously enough, the effect of this method of election on the relative strength of the parties is by no means as marked as one would suppose; and, indeed, the experience of all countries has shown that although a change in the suffrage may seriously modify the policy of the different parties, it has usually much less permanent influence on their proportions than is expected. The system has been said to favor the Conservatives at the expense of the Liberals,[1] and it is no doubt true that the Social Democrats, who are mainly workingmen from the cities, hold a number of seats in the Reichstag and scarcely any in the Landtag. As regards the other parties, however, the result is by no means so clear, for if we compare the elections to the Prussian House of Representatives which are conducted in this way with those of the Prussian members of the Reichstag who are elected by direct universal suffrage, we find that from 1870 to 1878, when the government was allied with the Moderate Liberals and only partially friendly with the Conservatives, the former had an advantage over the latter in the elections to the Landtag as compared with the elections to the Reichstag; that in 1878–79, when Bismarck's relations to the parties were still uncertain, the ratio of the different groups in the two representative bodies was not very unequal; and that after this time, when the favor of the government was definitely transferred to

[1] Lebon, pp. 200–3.

the Conservative parties, the proportion of these in the Landtag was decidedly larger than in the Reichstag.[1] Such a result would seem to prove that the chief effect of the Prussian method of election is not so much the help it gives to the Conservatives as the opportunity it affords to the government for exerting pressure at elections; and this is probably due less to the three-class system than to the fact that the voting in the case of

[1] It must be remembered that the National Liberals split in 1880, and the fraction which kept the name adhered to the government. The figures for the elections to the Reichstag in the following table are taken from the *Monatshefte zur Statistik des Deutschen Reichs*, 1875, v. p. 65; 1879, vi. pp. 37, 73; 1882, iii. p. 35; 1885, i. p. 139; 1887, iv. p. 35; 1890, iv. p. 61; 1893, iv. p. 3. For the Landtag I have not been able to get the official statistics, and the figures are taken from Müller (*Politische Geschichte de Gegenwart*), who is apt to lump the smaller groups together as unclassed. The figures for the Prussian members of the Reichstag are printed in roman type, those for the Landtag in italics.

	Conservatives.	Deutsche Reichspei (Free Conserv's).	Liberale Reichspei.	Left Centre.	National Liberals.	Liberale Vereins.	Deutsche Freisinns.	Freie Vereins.	Freie Volkspartei.	Fortschritt.	Volkspartei.	Social Democrats.	Centre.	Poles.	Guelphs, Danes, etc.	Antisemitics.	Unclassed, etc.
1870	*113*	*39*		*11*	*116*					*48*			*58*	*19*			*29*
1871	56	32	8		48					28	1		41	13	8		
1873	*32*	*33*		*26*	*160*					*62*			*85*	*17*			*18*
1874	21	23	1		82					33	1	3	52	14	5		
1876	*35*	*34*			*174*					*66*			*88*	*14*			*22*
1877	35	24	10		64					23	1	4	56	14	5		
1878	50	35	5		46					16	1	3	55	14	11		
1879	*104*	*54*			*101*					*35*			*96*	*19*			*24*
1881	42	17	1		16	27				39	1	4	59	18	12		
1882	*117*	*59*			*67*	*21*				*37*			*98*	*18*			*16*
1884	63	21			16		42					10	56	16	12		
1885	*141*	*60*			*70*		*44*						*99*	*14*	*5*		
1887	63	29			35		24					8	57	13	5		2
1888	*130*	*68*			*89*		*30*						*99*	*15*	*2*		
1890	54	14			17		45					14	60	16	12	3	1
1893	54	23			24			9	15			22	54	19	8	7	1
1893	*149*	*59*			*90*			*6*	*14*				*91*	*18*	*3*		*3*

the Landtag is oral,[1] while for the Reichstag it is conducted by secret ballot.

Before leaving this subject it is worth while to observe that indirect elections in Prussia have worked in the same way as our method of choosing the President by means of a college of electors; that is, the Prussian electors do not really select the representative, but are themselves almost always voted for in the name of a definite candidate whom they are pledged to support;[2] and, indeed, this must necessarily be the case whenever the electors have no other functions than the election.

Local government.

Although local institutions in Germany have not as direct a bearing on general politics as in France, the subject of local government in Prussia has a profound interest on account of the light it throws on German political conceptions, and still more because it embodies a recent attempt to solve one of the most difficult problems of modern government.[3]

The late reforms.

After the popular convulsion of 1848–49 had subsided, one of those reactions set in which have been so common in the history of Prussia. The landowners and a section of the Liberal party that

[1] This is true of the voting both by the people for the electors, and by these for the representatives, the Liberal party having tried in vain to introduce the secret ballot. v. Rönne, vol. i. p. 232; Lebon, p. 200.

[2] Boettcher, "Der Parlamentarismus im Deutschen Reiche" *Unsere Zeit*, 1881, 2, p. 520.

[3] For a description of the Prussian local government see v. Rönne, § 204 *et seq.*; Schulze, Abs. viii.; Goodnow, book iii. chap. vii. On this subject see also Gneist's works, and especially *Die Kreis-Ordnung*, *Zur Verwaltungsreform in Preussen*, *Das Englische Verwaltungsrecht*, 3d ed., pp. 369–72 and 413–21, and "Les Réformes Administratives en Prusse," in the *Revue Générale du Droit et des Sciences Politiques* for Oct. 1, 1886.

thought all property threatened formed a powerful coalition, which was in fact managed entirely in the interest of the landowners, and these, as we have seen when treating of administrative justice, abused their power beyond measure for the benefit of their partisans. As a part of their plan they effected an organization of the local administration which placed the control in their own hands, and in spite of all movements for reform the system they established lasted until the foundation of the Empire.

At this time the late Professor Gneist, the great historian of the English Parliament, prepared a memoir on the subject of local government which was afterwards published with some alterations under the title "Die Kreis-Ordnung." He pointed out that the imitations on the continent of the English parliamentary system had in most cases been unsuccessful, because the institutions which stood at the top of the British form of government had alone been copied, while there had been no attempt to adopt those which lay at the base of the structure. He declared that the whole English system rested on the organization of the local bodies. In these the taxes were paid and the power exercised by the upper and middle classes, which formed in consequence a strong aristocracy, and became at the same time the natural leaders of public opinion. The result was harmony between all the classes, and the development in each electoral community of a collective political conscience, producing there a continuous Liberal or Conservative tendency, and in the nation at large the permanence of party that is essential to

the stability of parliamentary government.[1] He urged the application of a similiar principle in Prussia as being preferable both to the half-bureaucratic, half-feudal system in existence, and to the democratic system in vogue in other countries; and he argued that by insisting on gratuitous service on the part of the upper and middle classes in local affairs, the state would not only improve the administration, but awaken a public sentiment strong enough to counterbalance the conflict of classes and consolidate the electoral bodies. Bismarck adopted these views, and in spite of the opposition at the outset of the general public, of all his colleagues, and of most of the high government officials, he succeeded, with the firm support of the King, in enacting from 1872 to 1883 a series of laws which remodeled the local government on the lines suggested by Gneist.

The objects of the reform.

One of the chief objects aimed at by the reformers was to lessen the privileges of the great landowners. But on the other hand the control was not to be placed in the hands of the masses; the intention being to prevent class tyranny, which had been peculiarly active in Prussia in the past, and to give to each class a certain share of power without allowing any one of them to acquire a control-

[1] Gneist remarks that the change in the basis of political power in England from land to industry has resulted in class conflicts and rapid changes of party, which is not the school in which true public life is developed. ("Les Réformes Administratives," *op. cit.*) In this connection may be noticed the curious fact that Prussia has adopted the principles of the old English local government at the very time when England has begun to abandon them.

ling authority. Another object of the reformers was, by introducing compulsory unpaid offices, to lessen the influence of the bureaucracy in local affairs, and to draft into the public service the better class of private citizens. A third object was to establish a system of administrative justice, and for this purpose the reformers, instead of creating an entirely distinct set of tribunals, took as a model the English Justices of the Peace, and confided judicial and executive powers to the same local bodies. Finally, a fourth object was to do away with special legislation altogether, placing the duty of supervising local affairs entirely in the hands of the administrative officials. Now if special legislation is excluded the system needs to be elastic, and hence the functions of the local bodies in Prussia are not minutely prescribed, but power is given to them in general terms, while the exercise of this power is subjected to an extensive control on the part of the higher administrative authorities. Appeals from each body to the next one above it in the hierarchical scale are allowed with great freedom, the result being a very complicated procedure. The whole system is, in fact, not a little confusing, and cannot be understood without keeping in mind certain principles which affect every part of the local government, and lie at the basis of the Prussian conception of administration.

One of these principles is the separation of those matters which are supposed to affect the whole country (*Staatsgeschäfte*), and form a part of the general administration of the state (*Allgemeine Landesverwaltung*), from those which have only a local bearing. The dis-

tinction is common to most continental countries, but it is not obvious to an American. In Prussia the subjects of police, religion, schools, and the supervision of subordinate local authorities, for example, are considered as affecting the whole country, and are placed in the hands of persons who act as agents of the central government; while the construction of roads, the maintenance of almshouses and asylums, and the voting of appropriations for purely local purposes are treated as matters of local interest. The subjects falling into the domains of general and local administration in Prussia are sometimes confided to the same body, sometimes to separate ones, but in all cases they are kept carefully distinct, the supervision and control of the government over the matters of general interest being more strict and far-reaching than over the others.

Separation of matters of general and local administration.

Another distinction which it is important to notice is that between those officers who belong to the professional administrative service and those who do not, for the laws expressly provide to which class the incumbent of each office shall belong. The first class are members of the Prussian bureaucracy, and, of course, are always paid. Before they are qualified to hold any position, they are required to go through an elaborate training, and to pass an examination which varies according as they intend to pursue a strictly administrative, or a judicial or semi-judicial career. The non-professional officers have no special training, but are selected from the community at large, and in most cases they receive no

Distinction between professional and lay officials.

compensation, their work being, as a rule, both gratuitous and compulsory. This separation of professional and lay offices has a strong tendency to discourage the pursuit of politics as a trade, and the use of appointments as political rewards; for the professional positions are open only to the members of the bureaucracy, and these are expected to be continually in office; while the places reserved for laymen, being gratuitous, offer no pecuniary temptation.

The provinces.

Prussia is divided into twelve provinces,—East Prussia, West Prussia, Brandenburg, Pomerania, Silesia, Posen, Saxony,[1] Westphalia, the Rhine Province, Hanover, Schleswig-Holstein, and Hesse-Nassau. These are not new arbitrary districts, but historical territories, which have been left so completely in their original form that parts of some of them comprise detached pieces entirely surrounded by the others. The new system of local self-government was originally applied only to the six provinces first named, lying in the eastern part of Prussia; but the scope of the new laws has gradually been enlarged so as to cover all the provinces except Posen, which has been suffered to remain under the old bureaucratic rule, partly because it makes a very important frontier against Russia, and partly because the Poles, who form a large proportion of the inhabitants, have often shown great hostility to the Prussian government. But although the new system has been extended over almost the whole of Prussia, its application has not been

[1] The province of Saxony must not be confused with the kingdom of the same name.

strictly uniform. Sometimes one name is given to a local subdivision or office, and sometimes another, while in a few points the method of government is substantially different in the different provinces. These variations will be noted in passing, where they are of any considerable importance.

Smaller local divisions.

The provincial government is closely connected with that of the lesser local divisions; so closely, in fact, that before describing it one must explain what the other divisions are. The twelve provinces are divided into *Regierungsbezirke*, or government districts, of which there are thirty-five in all. These again are subdivided into *Kreise*, or circles, of which there are four hundred and sixty-four, that is, on the average, thirty-nine in each province. The total population of Prussia, exclusive of Berlin, being about thirty millions, the average number of inhabitants in a Kreis is about sixty-four thousand, although, of course, the variations in this respect are very great. Smaller than the Kreise, there are districts for local police called *Amtsbezirke*, and smallest of all are the rural *Gemeinde*, or communes, which are in many cases hardly more than villages. The cities have a special municipal organization of their own.

Government of the province.

In the province, the matters that form part of the general administration of the state, and those which have a purely local interest, are intrusted to entirely distinct sets of officials. This was not the original intention, for the bill as introduced contemplated only one board or council which should deal with both classes of subjects; but the Conserva-

tives in the House of Peers, in order to secure more independence in local affairs, and to obtain greater power for themselves, brought about the creation of a separate council for each class. The chief executive officer of the province for matters of general administration is the *Oberpräsident*, who is a purely professional official appointed by the King, and acts as the direct representative of the ministers at Berlin. He attends to all affairs of this nature that affect more than one Regierungsbezirk, watches over the subordinate administrative and local authorities, and presides in a number of boards. For the conduct of matters of general administration, there is also a *Provinzialrath*, or provincial council, composed of the Oberpräsident as chairman, of a single professional councillor appointed by the Minister of the Interior practically for life, and of five lay members elected for six years by the *Provinzialausschuss*, a body which will be described in due course.[1] The Provinzialrath has a direct executive authority over a very limited range of subjects, such as the duration of markets and the construction of certain roads; but its chief power is indirect. Of this nature are its function of hearing and deciding appeals from some of the subordinate administrative bodies, especially the city councils, and more important still its control over many of the acts of the

Matters which form part of the general administration of the state.

The Oberpräsident.

The Provinzialrath.

[1] As is generally the case in the Prussian organs of local government these lay members are not all elected at once, but they are chosen by twos and threes every three years; and, as is also usually the case in these organs, a substitute for each member of the council is selected at the same time.

Oberpräsident, all whose ordinances, for example, require its consent.[1] By means of this indirect power the lay members, who form the majority, are enabled to exert an effective control over the bureaucracy, a result which, as we have seen, the authors of the reform intended to bring about.

Matters of local interest.

The Provinzial-landtag.

We come now to those matters which are considered as having a purely local interest. The legislative organ for this class of subjects is the *Provinziallandtag*, or assembly of the province, a body composed of members elected for six years by the various Kreise into which the province is divided, half the members retiring every three years. The seats are distributed among the Kreise according to population; but in order to avoid frequent elections by the people, the members are chosen not directly by them, but by the diets of the Kreise, or, in case a city forms a Kreis by itself (which happens whenever it has twenty-five thousand inhabitants), they are chosen by the municipal authorities. The Provinziallandtag is summoned by the crown to meet at least every two years, and as much oftener as is necessary. Its duties cover the construction of roads, the maintenance of almshouses and asylums, agricultural improvements, the creation of provincial offices, the enactment of by-laws, the giving of advice on provincial matters when asked to do so by the royal government, and the voting of appropriations and taxes, the latter being paid not directly by the citizens, but by

[1] In cases that are urgent, the Oberpräsident can make ordinances valid for three months without such consent.

the various Kreise, which are thus the provincial unit for both taxation and representation.[1] It is impossible, however, to give a complete catalogue of the functions of the Landtag, because it is empowered in general terms to do anything it thinks best within the domain of provincial administration. But an authority so vague and comprehensive implies a careful supervision and control on the part of the government, and hence the Oberpräsident, as the representative of the state, is given a right to be present in the Landtag, and can suspend any of its acts which are beyond its competence.[2] Moreover, its by-laws require the approval of the crown, while all loans, all taxes above a certain amount, and a number of other acts, require the consent of one or more of the ministers at Berlin. Finally, in case the Landtag becomes refractory, it can be dissolved by the King.

The Provinzialausschuss.

The executive organ of the province for local matters is the *Provinzialausschuss*, or provincial committee, composed of members elected by the Provinziallandtag for six years, and varying in number according to the by-laws, from seven to fourteen.[3] This body carries out the votes of the Landtag, and has under its orders a salaried administrative officer called the *Landeshauptmann* or *Landesdirector*, who is *ex officio* one of its members,

[1] A considerable part of the revenues of the provinces is, however, derived from subsidies granted by the state.

[2] The Oberpräsident does not preside, but acts only as a sort of royal commissioner, the Landtag being allowed, in accordance with the older traditions, to choose its own presiding officer.

[3] As usual, one half of them retire every three years.

and is also elected by the Landtag, but must be confirmed by the King. In the province, therefore, the administration of general and local matters is placed in entirely distinct hands, the former being confided to the Provinzialrath and the latter to the Provinzialausschuss. These are the two bodies that were combined in the original plan, but were separated by the influence of the Conservatives in the House of Peers. Such a separation is not, however, carried into any of the smaller local divisions; for, although the two classes of subjects are kept distinct, there is no other case where they are intrusted to different organs existing side by side in the same district.

Berlin.

There are some variations in the government of the different provinces which are not of sufficient consequence to require special mention here. But it is important to notice that Berlin is separated both for central and local administration from Brandenburg, and forms for these purposes virtually a province by itself. It has, however, no special provincial organization, all the duties that would otherwise fall to the provincial authorities being discharged by the municipal officers, except the police, which is confided to a commission appointed by the royal government.

The Regierungsbezirk.

The Regierung.

In the province local affairs play a much more prominent part than those which affect the whole state; but the next divisions, the *Regierungsbezirke*, exist solely for the conduct of general administration. In each of these districts there is a *Regierung*, or government, com-

posed exclusively of professional officials appointed by the King, and having at its head a *Regierungspräsident*, who has a very considerable power of overriding its decisions. It has charge of questions relating to state taxes, churches, schools, and the public domain; in other words, all matters that are administered directly by the officials of the district, except the police. This, together with the control of subordinate authorities, is confided to the *Bezirksausschuss*, or district committee. The object of the arrangement was to keep state taxes and the other matters already enumerated exclusively in the hands of professional officials, but to place the police and the supervision of local bodies under control of laymen. In the Bezirksausschuss, therefore, the popular or lay element predominates, for of the seven members four are non-professional men elected by the Provinzialausschuss for six years, one half being chosen every three years. Of the three remaining members, one is the Regierungspräsident; another must be qualified for the judicial, and the third for the higher administrative service, both of the last being appointed by the King for life. The functions of the committee are threefold: first, its consent is required for police ordinances made by the Regierungspräsident; second, with that officer as its chairman, it supervises the inferior local authorities, and hears appeals from their decisions in matters of official discretion; lastly, it acts as an administrative court, and in that case the Regierungspräsident does not sit, but the judicial member presides, and all the members enjoy the immunity of judges.

The Bezirksausschuss.

The organization of the Regierungsbezirk seems to a foreigner needlessly complex, and the division of its functions between two bodies somewhat unnecessary, especially when we consider that both of them act as agents of the central government, and deal only with those matters that are supposed to affect the whole state. But the system is, in fact, the result of a careful and logical application of the modern Prussian theories of administration. In the first place, it was thought, as we have seen, that the matters of state taxes, schools, etc., ought to be managed entirely by professional officials, but that the police, in its wider sense, and the supervision of the organs of local self-government, ought to be largely under the control of laymen. Hence the separation between the Regierung and the Bezirksausschuss. In the second place, it was felt that a sharp line ought to be drawn between executive action and judicial decisions; that the Regierungspräsident, who might be concerned with the issuing of police ordinances by the subordinate local authorities, ought not to sit in the tribunal that passed upon their legality. From 1872 to 1875 the same body had exercised both classes of functions, but experience showed the evils of this arrangement, and in the latter year two separate bodies were created. In 1882 they were again united, for the sake of simplicity, and the lay members were suffered to act in both capacities; but it was provided that the professional members should be changed according to the nature of the business to be transacted.[1]

[1] See Gneist, *Zur Verwaltungsreform*, ch. viii.; *Das Englische Verwaltungsrecht*, 3d ed., pp. 420–21, and "Les Réformes Administratives," *op. cit.*

In the Kreis, or circle, the distinction between the spheres of central and local administration is again preserved, but both are intrusted to the same organs, which exercise therefore a double set of functions. These organs, however, are subjected to a strict supervision and control, especially on the part of the Bezirksausschuss. The chief executive officer of the Kreis is the Landrath, who, although he is appointed by the King, is usually, but not necessarily, selected from a list presented by the *Kreistag*, or diet of the circle. He is a strictly professional officer, and must have passed examinations qualifying him for the higher administrative service. As his competence extends to both central and local matters, his duties are analogous not only to those performed in the province by the Oberpräsident, but also to those intrusted to the Landesdirector. Moreover, he presides over the Kreistag and the Kreisausschuss.

The Kreis.

The Landrath.

The body last mentioned, composed of the Landrath and six lay members elected by the Kreistag for six years, is the executive committee of the circle, and as such it corresponds to the Provinzialausschuss. But it has also functions analogous to those formerly exercised by the English justices of the peace in the special and quarter sessions. In this capacity it hears appeals from the acts of the subordinate officials. It is, indeed, the lowest administrative court: and herewith is connected a distinction in procedure; for when an executive matter is under consideration, the session is secret and the

The Kreisausschuss.

members are liable for their acts like other officials; but when an administrative cause is tried, the session is public, the procedure is judicial, and the members are protected like judges. The preponderance of the lay element in the Kreisausschuss has prevented bureaucratic routine, while the presence of the Landrath has preserved the interests of the state, and in fact this body, which is certainly one of the most characteristic features of the new system, is generally considered one of the most successful.

The Amtsvorsteher.

Before turning to the Kreistag there is one officer who must be considered, because he is in reality a member of the executive government of the Kreis. This is the *Amtsvorsteher* or *Amtmann*, whose authority extends over a district comprising a number of communes, and containing about fifteen hundred inhabitants. He occupies a position similar to that of an English justice of the peace (except that he has no strictly judicial functions), for he administers the poor and health laws and takes charge of the police, having under his orders for this purpose the mayors of the communes. He is appointed for six years from a list drawn up by the Kreistag, and is under the supervision of the Kreisausschuss. The object of creating this office was to take the control of the police out of the hands of the hereditary magistrates and intrust it, not to the bureaucracy, but to the better class of citizens selected from the community at large; and hence the office is compulsory and unpaid. Like the English justice of the peace, the Amtsvorsteher is chosen as a rule from

among the large landowners, who therefore continue to perform as officers of the crown the same functions they formerly exercised in their own right.[1]

The representative body of the Kreis is called the *Kreistag*, and like most of the other organs of local government it is elected for six years, one half of the members retiring every three years. It has power to make rules for the administration of local affairs, to create local offices, and to establish charitable and other institutions for the benefit of the Kreis; but its most important business is raising a revenue, which it does by making additions to the direct state tax. It will be remembered that the expenses of the province, so far as they are not defrayed by donations from the state treasury, are assessed upon the Kreis, which thus votes the taxes required, not only for its own, but also for the provincial administration. In order, therefore, to prevent extravagance, it is provided by statute that the Kreistag shall not, without the consent of the superior authorities, make an addition of more than fifty per cent. to the state tax, or contract any loans not specially authorized.

The Kreistag.

The Kreistag is, however, a body of far greater importance than this description of its functions would indicate, for it chooses, directly or indirectly, all the elective officers of the Kreis, the Regierungsbezirk, and the province. It is thus the foundation on which rest all the organs of local self-government, except the

[1] C. Bornhak, "The Local Government of Country Communities in Prussia," *Ann. Am. Acad. Pol. Sci.*, Jan., 1893, p. 7.

cities and the rural communes, because it is the source from which their members are derived. The character of the whole local government depends, therefore, on the method of election to the Kreistag. Before 1875 the franchise was so regulated that the great landowners held almost all the power; but although under the new system the three former electoral colleges of landowners, peasants, and cities have been retained, they have been reorganized with a view of preventing any one of them from acquiring a decided preponderance. The representatives are allotted to these three colleges, or *Verbände*, as they are called, in the following complicated manner:[1] first, they are divided between the cities and the rural districts according to population, subject, however, to the provision that all the cities in the Kreis shall not together elect more than one half of the members, or, if there is only one city, it shall not elect more than a third. The urban seats are then distributed among the cities, the representatives being chosen, not by the inhabitants, but by the municipal authorities; and lastly the seats that fall to the rural districts are divided equally between the two remaining colleges. Of these, the college of the great landowners, or rather the large tax-payers, is composed of all persons, natural or corporate, who pay within the Kreis and outside of the cities a tax on land or trade,

[1] A representative must be a member of the college by which he is chosen; and if, as in the case of the cities and rural communes, the election is made by districts, he must be a voter in the district which he represents.

which may be fixed by the Provinziallandtag at any sum from one hundred and fifty to four hundred and fifty marks, each member of the college having a single vote. The third college has a much more complicated organization. The electors consist, first, of all persons who pay within the rural portion of the Kreis a small tax on their trade or occupation; second, of delegates chosen by the assemblies of the rural communes; and third, of the proprietors of manors, which are treated like communes, but are, in fact, fast disappearing. It will be noticed that the method of electing the Kreistag is by no means democratic, since the suffrage is neither universal nor equal. The system is not based on the theory that every man ought to have an equal share in the management of public affairs, but proceeds on the principle of so balancing the various interests in the community that no one of them can oppress another. Interests, not numbers, are represented, and hence plural voting, which has been so much decried of late in England, is deliberately sanctioned, for residence in the Kreis is not required, but a man can vote wherever he owns property or carries on his business. Even the state is allowed to cast a ballot if it possesses land, — a privilege which, in the college of large tax-payers, is also extended to women, infants and lunatics acting by means of their representatives.

The rural communes.

The government of the *Landgemeinde*, or small rural communities, has recently been simplified by the statutes of 1891–92, which apply to the seven eastern provinces and to Schleswig-

Holstein.[1] By these acts the franchise, which was formerly confined to landowners, has been extended to all persons who pay a certain tax or have a certain income. Yet the more recent laws are in some ways less democratic than the older ones, for all the citizens who enjoyed the franchise were formerly treated alike and given a single vote apiece, but now one third of the total voting power is exercised by each of the three classes of tax-payers without regard to numbers. This is true of the smaller communes, where business is transacted by a mass meeting of all the voters, as well as of the larger ones, where it applies to the election of a representative council.[2] Owing to the small size of the communes, their powers are far from extensive, and their organization is comparatively simple.

The mass meeting of citizens, or the representative body, as the case may be, regulates the common pasturage, the churches, the schools, and the less important roads. It also elects for six years a mayor, known in some parts of the country as the *Schulze*, in others as the *Gemeindevorsteher* or *Dorfsrichter;* and it chooses in the same way one or more assistants called *Schöppen*, *Gerichtsmänner*, or *Dorfsgeschworene*.[3] The Schulze is the executive head of the commune,

[1] For a review of these acts, see C. Bornhak, "The Local Government of Country Communities in Prussia," *op. cit.*

[2] In the western provinces the three-class system does not apply, but the larger tax-payers are given a special share of power. There appear to be elected councils in all the communes of these provinces.

[3] The choice of these officers can be vetoed by the Landrath with the consent of the Kreisausschuss. In the Rhine Province the Schulze is appointed by the Landrath.

and subject to the control of the meeting of citizens, or the representative body, he administers the local affairs, the *Schöppen* being only his advisers. He is also an officer of the central government, and in that capacity has control of the police. He is not, however, a professional member of the bureaucracy, and his position is both obligatory and unpaid. Many of the rural communes and manors are too small to perform their duties properly, and, as they have shown themselves reluctant to unite voluntarily into larger groups, the acts of 1891–92 empowered the superior authorities, when necessary, to combine them, either for all local purposes, or for certain special ones. The change in the law aroused no little opposition on the part of the landed gentry, who want to preserve as far as possible the political independence of their estates.

The manor.

Among the remnants of the feudal system that still exist in Prussia, there are many manors (*Gutsbezirke*). These form communes by themselves, the administration of public affairs being in the hands of the lord of the manor, who bears all the charges at his own expense, and has a right to act as mayor himself or appoint a deputy to fill the office, subject, however, in either case, to the approval of the Landrath.

The city.

The government of the Prussian cities is regulated by statutes which are older than the reform laws of 1872, and which are not identical for all the different provinces. The general principles, however, are much the same in most parts of the

kingdom.[1] The central organ of the system is the city council, composed of members (*Stadtverordnete*) chosen generally, if not always, by the citizens voting in three classes, according to the amount of taxes they pay, the method of election being the same as that employed in the case of the Prussian House of Representatives. Of course, this system throws a controlling power into the hands of a comparatively small number of the richer men, as may be seen from the fact that in Bonn, at the elections of 1885, the first class of highest tax-payers contained only five per cent. of the voters, and the second only fourteen and a half per cent.; so that less than one fifth of the voters (or six hundred and thirty-three men out of a population of over thirty-five thousand), elected two thirds of the council, while the remaining four fifths elected the other third.[2] In Berlin the proportions are even more unequal, the first class containing less than two per cent. of the voters, the second less than thirteen per cent., and the third eighty-six per cent. Sometimes the inequality is still greater, as for example in Essen, which has been built up by the Krupp gun-works into a city of nearly one hundred thousand people, and yet where the class of highest tax-payers consists of only four men.[3] The members of the council are, as usual, elected for six

The city council.

[1] In addition to the authorities already cited, see Leclerc, "La Vie Municipale en Prusse," *Annales de l'Ecole Libre des Sciences Politiques*, 1888, p. 492; and Albert Shaw, *Municipal Government in Continental Europe*, chs. v. and vi.

[2] Leclerc, *Ib.*, pp. 504–5.

[3] Shaw, pp. 307–8.

years, one third retiring every two years. Their number varies in the different cities, being on the average about fifty; but in some cases it is much larger, as for example in Berlin, where it is one hundred and twenty-six. The council has general control of the city administration, electing the executive officials,[1] and directing how the public business shall be conducted. It has, in fact, an exceedingly wide discretion, for the statutes do not define the functions which the municipality shall exercise, but allow the council to undertake whatever public services it sees fit, — a power which has been used in a number of Prussian cities to establish municipal savings banks and pawnshops, and gas and electric plants for the supply of both public and private wants. An authority of such an unlimited character is not of course granted without some means of supervision, and this is found partly in the executive board of the city, which has power to veto any measures of the council that require its own active participation, and do not fall within the ordinary current administration, and partly in the Bezirksausschuss, whose consent is required for certain important matters, notably for loans and taxes above a certain limit.

The executive body of the city (*Gemeindevorstand*, *Magistratsrath*, or *Stadtrath*) is in most of the provinces a board, consisting of a burgomaster and a number of professional and lay mem- The city executive.

[1] In Hanover the members of the *Stadtrath*, or executive board of the city, take part in the election of their colleagues or successors. In Schleswig-Holstein these officers are chosen directly by the citizens.

bers, the services of the last being obligatory and unpaid.[1] The board manages the different departments of the administration by means of permanent commissions, each of which contains in like manner both professional and lay members selected by the city council with the approval of the executive board. The object of the system is to enlist a large number of private citizens in the service of the city, the necessary technical knowledge being supplied by the presence of the professional officials. The burgomaster is only the president of the executive board, and has no special functions; but his office is nevertheless the most important one in the city, owing to the great influence he derives from his professional training and his long tenure of office. The occupation is, indeed, a career, for when a city is in need of a burgomaster it advertises for applicants, and often takes one who has made a reputation in a smaller place.[2] Moreover, the appointment must be made for at least twelve years, and may be made for life; but whatever the nominal term of office may be, the position is virtually permanent, a good man, it is said, being always reappointed.[3] It must be added that, as compared with the usual pay of officials in Germany, the salary is very large.

The burgomaster.

[1] In the Rhine Province, the cities have a right to establish either a board of this kind, or a single executive officer, — the burgomaster. Most of the cities have preferred the latter. Leclerc, *ubi supra*, pp. 509–12.

[2] Goodnow, p. 333; Leclerc, p. 511; Shaw, pp. 317–19.

[3] From 1850 to 1888 Bonn had only two burgomasters. In fact, the first one was reëlected for a third term of twelve years, but the government refused to confirm him. Leclerc, p. 510.

Like most of the agencies of local government, the Stadtrath exercises a double set of functions, and is placed under a double supervision. On the one hand, it is the executive organ of the city for matters of purely municipal interest, and as such it is controlled by the city council, subject to the supervision of the Bezirksausschuss. On the other hand, it is intrusted with the administration of affairs affecting the whole state, and in these it is checked by the Regierung. But unlike the rural communities, this is not considered a sufficient guarantee of law and order. The state has, therefore, reserved the right to put the city police into the hands of a commission appointed by itself, and in the case of the large cities it has commonly done so.[1] As an additional safeguard, moreover, the selection of the burgomaster, and in fact of all the professional members of the Stadtrath, requires the approval of the central government, which, in Bismarck's day, seems to have been often refused for political reasons.

Actual working of the system.

In regard to the actual working of local government in Prussia, a foreigner must express an opinion with great caution. This is especially true of the provincial and rural institutions, both on account of the comparatively short time they have been in operation, and because it is difficult to acquire a thorough knowledge of the country districts,

[1] Cf. Shaw, p. 321. When a city has over twenty-five thousand inhabitants, its share of the general or state administration is still further increased, because it forms a Kreis by itself. Under these circumstances a Stadtausschuss, composed of the burgomaster and four persons elected by the city council, is formed to act as an administrative court, and to attend to other duties usually performed by the Kreisausschuss.

or to find any really decisive test of efficiency. The best evidence in favor of that part of the new scheme consists in the fact that its author, Professor Gneist, was well satisfied with its results.[1] In the case of the cities, on the other hand, it is possible to form a more positive judgment, and this is fortunate, because in most countries of the present day the problem of municipal government is more pressing and far more difficult than that of rural administration. The Prussian system has succeeded in enlisting in the public service the best class of citizens. Merchants, professional men, and even scholars, think it an honor to sit in the council, and reëlections are so general that a steady progressive policy can be pursued. Among the professional officials, also, capable public servants virtually enjoy a permanent tenure of office. In short, politics, in the lower sense of the term, seems, as a rule, to have very little to do with the administration of the city, which is conducted on strictly business principles; and the result is not only honesty, but efficiency and economy in a high degree.[2] Unfortunately the government that is best administered is not necessarily perfect, and the Prussian municipal system seems to have one grave defect. Its excellence is due to the fact that the city is governed by the most intelligent and thrifty class of citizens, by those who pay the taxes, and hence are anxious to see that the revenues are carefully and wisely spent. But the preponderating

[1] See *Zur Verwaltungsreform*, ch. vi.; *Der Rechtsstaat*, 2d ed. pp. 314–20; "Les Réformes Administratives," *ubi supra*.

[2] Cf. Shaw, pp. 311, 332–33; Leclerc, pp. 516–19.

influence given to the rich seems to be a cause of discontent among the poor. Their indifference is shown by the small part of the lowest class of tax-payers who take the trouble to vote at municipal elections. At Berlin, for example, in 1893, forty-seven and a half per cent. of the first class of tax-payers voted, thirty-seven per cent. of the second, and twenty-six and a half per cent. of the third.[1] In Bonn the disproportion at the elections of 1885 was even greater, for sixty-four per cent. of the first class and sixty-six of the second voted, but only twenty-two of the third. In the last of these cities, indeed, it is a striking fact that while the proportion of voters in the first two classes had, on the whole, increased during the preceding ten years, that in the third had steadily diminished.[2] The indifference on the part of the working-classes is not the result of mere apathy or lack of interest in public affairs. It is a symptom of a graver trouble. The large cities of Prussia are teeming with socialists, whose moving sentiment is a profound dissatisfaction with the political and social condition of the state, and not least among their causes of discontent may be placed their small share in the municipal administration. The present system of local government certainly has not produced in the cities the harmony between the different classes which was urged as one of the chief reasons for the late reforms.[3]

[1] Shaw, pp. 307–8.

[2] The abstention of the poor is said to be due partly to the small importance of their votes, and partly to the fact that, the vote being oral and public, the workmen are afraid to declare themselves openly in favor of a candidate who is opposed by their employers. Leclerc, pp. 505–6.

[3] The actual municipal system antedates Gneist's memoir, but is quite

The other German States.

The smaller German States are far less important factors in the Empire than Prussia, and yet a description of the political system of Germany would not be complete without a reference to their institutions. With the exception of the three Hanse cities, each of these States has a monarchical form of government; and, on the other hand, in all of them save the Mecklenburgs, a representative body, elected on a more or less extended suffrage, has a general control over legislation and finance. The ministers, however, are nowhere responsible to this body in the parliamentary sense, and hence the princes exercise personally a great deal of power. Throughout Germany, therefore, the monarchical principle retains its vigor; and while the representatives of the people have obtained a share in the direction of public affairs, in no State have they drawn the whole conduct of the government into their own hands. Let us consider briefly these States in succession.

Saxony. (Area, 5,787 sq. m.; pop. 3,502,684.)[1]

The existing Saxon constitution was made in 1831, but since that time amendments have been passed extending the franchise and increasing the power of the Landtag,[2] — an amendment

in accord with its principles. On the other hand, when Gneist spoke of the harmony of classes, he was referring primarily to rural communities. Bornhak, in a memoir of Gneist, comments on the failure of his system in this respect. (*Ann. Amer. Acad. of Pol. Sci.*, March, 1896, pp. 94–95.)

[1] The populations given in the text are those of the census of Dec. 1, 1890.

[2] See Leuthold, *Sachsen*, in Marquardsen. The constitutions of all the German States in force in 1884 (except the Mecklenburgs, which have no written constitutions) may be found in Stoerk, *Handbuch der Deutschen Verfassungen.*

requiring in each chamber the presence of three quarters of the members and a vote of two thirds of those present.[1] In order to prevent conflicts on constitutional questions, there has been established in Saxony and in some of the other German States a special tribunal, called the *Staatsgerichtshof*, composed of six judges selected by the King, and six members of the Landtag, three of whom are chosen by each of the chambers. The duties of this body consist in trying impeachments, and deciding any disputes about the interpretation of the constitution.

At the head of the state is the King,[2] whose administrative authority and power to issue ordinances appear to be, if anything, even more extensive than in most of the German States. His control over legislation is also unusually wide, for not only do all laws require his consent, but he can require the Landtag to accept or reject a bill without amendment in the form in which he chooses to present it. Moreover, in case the Landtag fails to vote such supplies as the ministers think necessary, he can collect and expend the taxes for a year on his own authority. The constitution contains, indeed, the customary provision about countersignature by a minister; but in Germany this does not practi-

[1] If the proposal comes from the Chambers and not from the crown, the amendment must pass two successive Landtage, a provision which shows a curious dread of popular impulse, considering the fact that in all cases an amendment requires the royal assent.

[2] The constitution is mentioned before the King for the sake of convenience, but the reader must not suppose that the royal prerogatives are in any sense derived from that instrument. On the contrary, according to the German view of the matter, the constitution merely limits the exercise by the crown of its own inherent powers.

cally limit the personal authority of the monarch, because he appoints and removes the ministers at will.

The *Ständeversammlung*, or Assembly of Estates, which must be summoned to a regular Landtag at least every other year, consists of two chambers. The first contains the royal princes; certain nobles; high officials, clerical, educational, and municipal; members appointed by the crown; and representatives elected by certain privileged bodies. The second is composed of thirty-seven members from the cities and forty-five from the country, each of whom is chosen by direct secret ballot in a separate district fixed by the Minister of the Interior.[1] The franchise extends to all men who pay three marks a year in taxes on land or income, and the term is six years, one third of the members retiring every two years. The budget and all laws require the consent of the Landtag, as do all treaties touching matters that fall within its competence.[2] It has also power to address the crown, to initiate legislation, and to impeach and interpellate the ministers, who have, of course, a right to be present and speak on all occasions. According to the old German custom, it chooses a permanent committee of its own members (*Landtagsausschuss*), which continues to act between the sessions, and whose chief duty is to help in the administration of the public debt.[3]

[1] A plurality elects. The members are paid. From a fear of the growing power of the Socialists the three-class system of election was introduced early in 1896.

[2] If the chambers do not agree about any measure, including the budget, a conference committee is appointed, and the report of this body is considered as adopted unless rejected by a two thirds majority in one of the chambers.

[3] This body exists in most of the German States.

The administrative system and the method of local government bear in their general traits a considerable resemblance to those of Prussia.

Bavaria. (Area, 29,282 sq. m.; pop. 5,594,982.)

In Bavaria[1] the constitution, which dates from 1818, was modeled a good deal on that of the kingdom of Westphalia, and in spite of later changes bears the trace of French ideas. The process of amendment is somewhat peculiar, for not only is a two thirds vote required in each chamber on three separate occasions, but the right of the Landtag to propose amendments, which was originally denied altogether, is still restricted.

The King[2] has the usual powers, and there is the ordinary provision that his acts must be countersigned. By royal ordinance, indeed, the most important acts require the signatures of all the ministers.

The Landtag has two chambers, of which one, the *Reichsrath*, is composed of the royal princes, of crown officers and high ecclesiastics, of mediatized nobles, and of members appointed by the king in heredity or for life. The other, the *Abgeordnetenkammer*, consists of one hundred and fifty-nine members chosen for six years by electors, who in turn are chosen by the people, the franchise extending to all men who pay direct state taxes.[3] The electoral districts return from one to four members apiece; and, subject to certain general provisions of law, are determined not by statute but by

[1] See Von Seydel, *Bayern*, in Marquardsen.

[2] The present King being insane, the royal power is actually exercised by his uncle Luitpold as regent.

[3] The ballot is secret. An absolute majority is required for election. The members are paid.

the administration, — a power of which the ministers have made use more than once to change the districts on the eve of election in hopes of obtaining a majority favorable to themselves.

The Landtag, which must be regularly summoned every other year, has practically control over the budget of expenses. Moreover, all laws which alter existing statutes, or touch personal freedom or property, require its consent, as do all direct taxes, and all changes in the indirect ones. The traces of French influence may be seen both in the restrictions placed upon it, and in the extent of the powers granted to it; for the chambers are forbidden to debate matters that do not fall within their competence, or to issue addresses to the people, but, on the other hand, they are given unusual authority in the matter of holding inquests, requiring information, and interpellating the ministers.[1]

The Bavarian local government does not resemble the Prussian so closely as does that of Saxony, but, except in the cities, there is a similar effort to give a special share of power to the larger tax-payers, although the principle is worked out in a ruder form.[2]

The political history of Bavaria since 1869 has hinged upon the struggle on the part of the Ultramontanes to make the cabinet responsible in the parlia-

[1] A minister must answer an interpellation or explain his reasons for not doing so. His answer may be followed by a debate, but no motion can be made at that time. The ministers have, as usual, a right to speak in the chambers.

[2] In Bavaria, there is a system of administrative courts. There is also a Staatsrath with advisory functions, but its duties are not very important.

mentary sense of the term.[1] In 1869, and again in 1870, they succeeded in forcing out of office one or two ministers who were peculiarly obnoxious to them, but with these exceptions their efforts have failed, — a result which is the more extraordinary because they have had a small but almost uninterrupted majority in the popular house, while the ministers, although not always in harmony among themselves, and by no means the representatives of any party, have pursued in the main a decidedly liberal policy.[2] The success of the ministers in maintaining themselves in office in the face of a majority often bitterly hostile has been due partly to their dexterity in making timely concessions, partly to the help of the Reichsrath, which has usually been on their side, but above all, to the determined support of the crown. The entrance of Bavaria into the Empire, for example, was due to the personal convictions of King Louis, and it may be doubted whether, if the cabinet had been responsible to the deputies, Bavaria would ever have taken that step. The unwillingness of the King to select his ministers among the Clericals is due to the fact that they are extreme in their views. In no other country of Europe, except Belgium, do the priests take such an active part in politics, the wide suffrage rendering their influence over the peasants a controlling factor at elections. Hence

[1] See a series of articles by Müller, in *Unsere Zeit* for 1870, 1874, 1883, 1887, and 1891.

[2] At the elections of July, 1893, the Ultramontanes lost their majority. The seats they lost were won, however, not by the Liberals, but by the Social Democrats and the Peasants' League, both radical bodies, who now hold the balance of power.

the government cannot accept the guidance of the Clericals without submitting to the dictation of the church; and even Prince Luitpold, who had formerly been in sympathy with them, found himself compelled on becoming Regent to follow the policy of the late King.

The difficulties in the political situation at home have to some extent thrown the King into the arms of the Emperor, and brought about a greater harmony between the courts of Munich and Berlin than would probably have existed otherwise. The result is, however, due to another cause also; for, in speaking of her position in the Empire, it must be remembered that the reserved rights of Bavaria are greater in appearance than in reality, and that her King has more the show than the power of an independent sovereign. As has been remarked, he has a right to appoint ambassadors without the power to make treaties, and he has an army which he cannot command in time of war.[1] His share in the federal administration is chiefly advisory, and hence his influence depends to a great extent on the cordiality of his relations with the imperial government.

Wurtemberg. (Area,[2] 7,528 sq. m.; pop., 2,036,522.)

The constitution of Wurtemberg is one of those granted in 1819, shortly after the formation of the old Germanic Confederation; but it has, of course, been seriously modified at different times, a two thirds vote of both chambers being required for amendment.

[1] "La Bavière et l'Empire Allemand," Junon, *Annales de l'Ecole Libre des Sciences Pol.*, 1892, p. 283.

[2] See Gaupp, *Württemberg*, in Marquardsen.

The King can do no political act (except conferring titles of nobility) without the signature of a minister, and all his most important acts must be considered by the whole cabinet. Acting through his ministers, however, his authority is unusually extensive, even for a German sovereign; for he has the sole right of initiative in financial matters, and his power to take measures for the safety of the state in case of necessity is not limited to the times when the chambers are not in session. Nor does an ordinance issued under this power need to be submitted to them for approval.[1]

The legislature, which still bears the old name of *Ständeversammlung*, or Assembly of Estates, consists of a House of Lords, which has a composition similar to that of the Upper House in Bavaria, and a House of Deputies, containing ninety-three members elected for six years. Of these ninety-three, thirteen are members of the landowning nobility chosen by their peers, nine are high dignitaries of the Protestant and Catholic churches, and one is the Chancellor of the University, while the seven principal cities and the sixty-three rural districts elect one deputy apiece by manhood suffrage.[2] This is the only lower house in

[1] It is unnecessary to repeat that the crown has power to dissolve the Assembly, and that all laws require its assent, as these rights exist in every monarchical German State. The same thing is true (except in the two Mecklenburgs) of the necessity of a countersignature for all acts of the crown, and of the right of the ministers to speak in the chambers. Curiously enough, the Assembly of Wurtemberg, on account of its jealousy of the ministers, has refused to give them a general privilege of addressing committees.

[2] The election is direct and the ballot secret, the choice being made by absolute majority and *ballotage*. As usual in Germany, the age of voting is twenty-five years. The members are paid.

Germany that contains privileged members, and also the only one where members are elected by direct universal suffrage.[1] The Assembly must be summoned to meet once in three years, but is, in fact, called together every year. All laws, appropriations, and taxes,[2] and certain treaties, require its consent; and, in accordance with historic traditions, which formerly prevailed in all the German States, the public debt is managed by officials chosen by the houses in joint session and confirmed by the King, these officials being under the direction of committees of the Assembly. In order to prevent the houses from becoming too independent, they are forbidden to hold any communications, either directly or through their committees, with any state officials or other persons except the ministers; and although they may interpellate the latter, they cannot oblige them to answer. There is a standing committee, elected by the houses in joint session, whose duty consists in watching over constitutional rights, directing the management of the public debt, and giving advice on financial matters when the Assembly is not in session.

Local self-government in Wurtemberg is much less developed than in Prussia, and is far more under state tutelage.[3]

[1] That is the only one in any German State that has two chambers.

[2] The House of Lords has no power to amend the budget passed by the deputies. If it rejects this budget, the positive and negative votes in both houses are counted, and the majority thus found is decisive.

[3] There is in Wurtemberg a system of administrative justice, and there is a special court to decide constitutional controversies, part of whose members are appointed by the King, and part elected by the chambers.

The reader will no doubt have observed that the political organization of Wurtemberg is very far from liberal, even if judged by German standards, and yet the actual policy of the government has been by no means unprogressive.[1] The cause of this paradox is to be found in the character of the people, for there is no party in the state that can properly be called reactionary, but there is a powerful body of radicals, imbued with French ideas, who have repeatedly demanded a single representative chamber elected by universal suffrage, and it is chiefly a dread of the extreme principles of these men that has prevented any revision of the existing constitution. The result is that, while the undemocratic forms have been retained, the country has been ruled by a ministry of moderate progressive views supported by the Conservatives and National Liberals. This condition has lasted many years, for the present head of the cabinet, von Mittnacht, has held a portfolio continuously since 1867, and has had no serious difficulty with the Assembly since the war with France in 1870. Two things about the political history of Wurtemberg are especially noteworthy. The first is that, as in the other South German States, politics turn to a great extent on imperial questions, interpellations and motions being constantly made in regard to the instructions of the delegates to the Bundesrath. The second is that, unlike Bavaria, but like most other continental states, the deputies are divided not into two great parties,

[1] Some account of the recent political history of Wurtemberg may be found in *Unsere Zeit* for 1869, 1875, 1883, and 1891.

but into a number of groups. In Wurtemberg there are four of these, — the Conservatives, the National Liberals, the Democrats, and the Clericals; the first two supporting the government, and the others forming the opposition.

Baden. (Area, 5,821 sq. m.; pop., 1,657,867.)

In Baden[1] the constitution dates from 1818, but has been frequently amended, any change requiring a two thirds vote of both chambers.

The Grand Duke has the usual powers of a German monarch, and there is the universal provision about countersignatures.

Of the two chambers of the *Landstände*, one is composed of the princes of the ducal house, of a Catholic bishop and a Protestant dignitary, of a professor chosen by each of the two universities, of the heads of the great noble families, of eight members elected by the nobles of the second grade, and finally, of eight members appointed by the Grand Duke for the session. The other chamber consists of sixty-three members, elected by universal suffrage and indirect secret ballot, in fifty-six districts which are not exactly equal in population, but are based to some extent on taxation. The term of this chamber is four years, one half of the members being elected every two years. The Landstände must be summoned at least every other year. All taxes, loans, and expenditures,[2] and

[1] Schenkel, *Baden*, in Marquardsen.

[2] In case of necessity, the government has the usual power to spend money without the consent of the Landstände, subject to their subsequent approval. In case of war, it can also levy taxes. Whenever a budget has

all laws which affect the freedom or property of the citizens, require its consent. This leaves a considerable room for legislation by ordinance; and although the domain in which the government makes laws without the consent of the chambers has been constantly narrowing in practice, the crown still controls, as in most of the German States, the organization of the administrative service, except so far as its power is limited by the necessity of providing for the salaries in the budget.

The system of local government in Baden resembles closely that of Prussia. In it the larger tax-payers are given an especial share of power, chiefly by means of the three-class method of election. Baden has also a series of administrative courts similar to the Prussian, and in fact she was the first of the German States to create independent tribunals of this character.[1]

Baden has been on the whole the most liberal of the German States, and, except for the reactionary period between 1850 and 1860, the government has steadily pursued a progressive policy. It has also been decidedly national in its tendencies. As early as 1860, both the ministers and the chambers favored a closer union of Germany; and although the Grand Duke was

not been voted, the government can continue to collect the existing taxes for six months. A provision of this nature is common, especially in the smaller States. If the upper chamber rejects the budget, the same practice is followed as in Wurtemberg.

[1] Before any official can be sued or prosecuted, his superior can require from the highest administrative court a decision whether the act complained of is contrary to law, and the opinion so given is binding on the ordinary courts.

forced by circumstances to take the side of Austria in 1866, his troops displayed such a masterly inactivity that the general was accused of being a traitor to the South German allies. After the war, Baden was anxious to be admitted to the North German Confederation, and, as her geographical position made this impossible for a time, her government maintained a close harmony with Prussia, until the war with France brought about the union of all Germany in the Empire.

In the Chamber of Deputies the ministers are opposed by the Clericals and Democrats, and rely for support upon the Liberal or National Liberal party, whose majority, sometimes overwhelming and sometimes narrow, has continued without a break for more than thirty years. While, however, this party has, on the whole, acted in harmony with the cabinet, the relation between the two has been very different from that which exists in a parliamentary system. The majority has occasionally rejected or modified seriously the measures proposed by the government, and in 1880 it forced out of office a minister whose concessions to the church it did not approve. At one time, indeed, the Liberals complained that a new cabinet had been formed without consulting them or including any of their members, and that the government did not sufficiently consider their opinions; but the breach was healed by the aggressive attitude of the Clericals and Democrats, which caused the Liberals to rally to the support of the ministers against their common enemies.[1]

[1] This was in 1868. The nearest approach to a parliamentary change of ministers occurred in 1860, when a reactionary cabinet was replaced

In Hesse,[1] again, the constitution, originally made in 1820, though seriously modified, is still in force, the amendments requiring a two thirds vote of both chambers.

Hesse. (Area, 2,965 sq. m.; pop., 992,883.)

At the head of the government is the Grand Duke, who rules by means of a cabinet composed of a Minister of State and two other chiefs of departments.

The first chamber of the Ständeversammlung, or legislature, is similar to that of Baden,[2] while the second is chosen by electors, in their turn chosen by men who pay an income tax. There are in all fifty members, of whom ten are allotted to the cities, and the rest to the forty country districts, the urban and rural districts being carefully separated according to the German custom, in order to prevent the city voters from being swamped by the peasants. The members are elected for six years, one half being renewed every three years. The legislature has the same powers as in Baden; but, in order to avoid deadlocks between the chambers, there is a curious provision, resembling that which regulates the voting of the budget in Wurtemberg and Baden. In case one of the chambers rejects a bill, the government may submit it at the next session; and if one chamber

by a liberal one in consequence of a vote of the chamber; but the change would probably not have taken place against the personal opinions of the Grand Duke. Müller has given a sketch of the history of Baden, in his articles in *Unsere Zeit*, in 1872, 1883, and 1891.

[1] See Gareis, *Hesse*, in Marquardsen.

[2] It is interesting to note that among the families possessing hereditary seats is still found that of Baron Riedesel, who commanded the Hessians in the American Revolution.

again refuses to pass it, the government may nevertheless treat it as accepted, provided the whole number of affirmative votes in both chambers exceeds the total negative vote.[1]

The local government and the system of administrative justice have been copied from Prussia.

Oldenburg. (Area, 2,479 sq. m.; pop., 354,968.)

The constitution of Oldenburg,[2] made in 1852, may be classed among those in which, from a German point of view, the amount of self-government is quite large. It has worked smoothly and well; but in framing it a peculiar difficulty was presented by the geographical division of the territory, for the State consists of one large tract of land and two small outlying districts. One of these, the principality of Birkenfeld, lies far to the south, while the other, the principality of Lubeck, is close to the city of that name. Each of the two principalities is administered by a government board subordinate to the ministers, and has an elected council, which has a right to make suggestions and complaints about affairs specially affecting the principality, and must, indeed, be consulted in regard to them. These local organs have, therefore, an advisory voice about measures that have a peculiar local interest, but the final determination rests with the Grand Duke and the Landtag which represents every part of the State. This system, although not perfectly satisfactory, has in practice given a sufficient influence to the opinions of the outlying districts. In Oldenburg, as in all the

[1] This does not apply to amendments of the constitution.

[2] Becker, *Oldenburg*, in Marquardsen.

monarchical German States that remain to be considered, the Landtag consists of a single chamber. It is composed of thirty-four members[1] chosen by the tax-payers, the method of election being indirect, and the ballot secret. The term is three years, and a session must be held at least once during that period. The inconvenience that might arise from the infrequency of its meetings is to some extent obviated by its election of an *Ausschuss*, or committee, which is charged with the duty of watching over the interests of the Landtag and seeing that its votes are carried out, and which is authorized to consent to new laws and appropriations that are urgent but not important enough to warrant a special session of the Landtag.

The officials in Oldenburg are subject to the ordinary courts to a greater extent than is usual in Germany; but, on the other hand, there are no administrative courts, — an omission which Becker explains by pointing out that the evil which has made these courts a necessity in other German States, that is, the abuse of administrative power for party purposes, does not exist here. The conflicts between the different classes which have brought so much bitterness into party strife in Germany find no place in Oldenburg, for there is neither a powerful nobility nor a large city population. In fact, the Landtag, which has become more and more exclusively composed of peasants, is no longer divided into parties; and the Grand Duke, who has been a wise and philanthropic ruler, has scarcely any

[1] The members are paid.

difficulties of a political nature with the representatives of the people.

Brunswick. (Area, 1,424 sq. m.; pop., 403,773.)

In Brunswick[1] the constitution was made in 1832, and requires for amendment a vote of two thirds of all the members of the *Landesversammlung*. The nominal head of the state is the hereditary Duke, but the present possessor of the crown is not the actual ruler of the country. The late Duke was the last member of his branch of the family, and the next heir, the Duke of Cumberland, son of the King of Hanover, refused to acquiesce in the annexation of that kingdom by Prussia. Now the government of Brunswick by a prince hostile to Prussia, and out of sympathy with the political organization of Germany, would have produced constant friction; and therefore an amendment to the constitution was adopted in 1879, providing for a regency on the death of the reigning Duke. When this happened in 1884 Prince Albert, a member of the Prussian royal house, was chosen Regent, and exercises the ducal powers.

The Landesversammlung is elected for four years, and must be called together twice as often.[2] Its composition is singularly complicated. It contains forty-six members, of whom ten are chosen by the cities, twelve by the rural communes, three by the clergy of the Evangelical church, and twenty-one by various classes of tax-payers. The powers of the body are no less complex than its organization. Statutes which

[1] Otto, *Braunschweig*, in Marquardsen.

[2] Until the amendment of March 26, 1888, it was elected for six years, one half being renewed every three years.

amend the constitution, change organic institutions, or affect the financial, military, criminal, or private civil laws, require its consent, but it need only be consulted about others, including police regulations to which small penalties are attached. The legislative power is, however, further complicated by the existence of an Ausschuss elected by the Landesversammlung, and possessing an independent right to give its consent to a large class of statutes when that body is not in session.[1]

The local government resembles that of Prussia, and there is a system of administrative courts, the members of which are, however, all government officials.

Anhalt. (Area, 906 sq. m.; pop., 271,963.)

The constitution of Anhalt[2] dates from 1859, when the State was divided between two dukes; but after it became united under one head by the extinction of one of the ducal lines in 1863, a number of important amendments were passed.

The Duke rules by means of a Ministry of State, which is composed of a single minister and a number of councillors.

[1] When the constitution is violated, and in certain other prescribed cases, the Ausschuss can call the legislature together. In addition to the powers mentioned in the text, the Landesversammlung can initiate legislation, demand redress of grievances, and impeach public officials. It also elects for life a *Landsyndicus*, who acts as its clerk and general adviser, having for this purpose a right to examine the administration of the finances. In case the taxes are not voted, the government has a right to continue to collect them for another year. As is not uncommon in the German States, it is provided that the Landesversammlung must not refuse the appropriations needed for expenses constitutionally incurred, but may make its own estimate of their amount. It is not clearly settled what happens in case of disagreement on this point.

[2] Pietscher, *Anhalt*, in Marquardsen.

The Landtag, elected for six years, consists of thirty-six members, of whom two are appointed by the Duke, eight are chosen by the persons who pay a tax of twenty-one marks on land, and two by those who pay a tax of fifteen marks on trade, while the remaining twenty-four members are chosen by universal suffrage, indirect elections, and secret ballot, fourteen of them being allotted to the cities, and ten to the rural districts. The Landtag must be summoned at least once in three years, but in fact meets every year. Its approval is required for the budget and for all laws which affect the constitution or the rights or property of citizens, and in practice no laws are enacted without its consent. It can amend bills; and although it has strictly no right of initiative, it can request the enactment of statutes.

While dealing with Anhalt, it may be observed that in this duchy, as in many of the smaller German States, the administration of justice is not entirely conducted by the courts of the State. Thus the duchy has no supreme court of her own, an appeal from her highest court lying to one of the neighboring Prussian tribunals. This method of combining for the maintenance of courts, which is a striking illustration of the absence of petty jealousy on the part of the German sovereigns, gives to the smaller States a better judiciary than they could afford by themselves, and also confers on the whole country some of the advantages of judicial centralization.

The constitution of Waldeck[1] was made in 1852, and modified in 1878. Amendments require a two

[1] Böttcher, *Waldeck*, in Marquardsen.

thirds vote of the Landtag. The nominal head of the state is the Prince, who still retains the insignia of the reigning sovereign, but has really surrendered all his powers into the hands of the King of Prussia, in consideration of the assumption by the latter of a part of the expense caused by the union of Germany and the adoption of universal military service. This arrangement was made in 1867 for ten years by a treaty ratified by the Landtag. At the expiration of that time it was renewed for ten years more, and finally in 1887 was prolonged indefinitely, subject to termination on notice given by the Prince. By its terms the King of Prussia takes the place of the Prince for the whole internal government, except so far as the church and the domains of the crown are concerned. The Prince reserved, it is true, the prerogative of pardon, and the right of giving his consent to changes in the constitution and to statutes, but he agreed at the same time that he would make no use of these powers that might be disagreeable to Prussia.[1] He retained also the nominal control of foreign relations, including the right to make treaties and to appoint the member of the Bundesrath, but these powers are exercised through the *Landesdirector*, who is appointed by the King of Prussia. The Prince can, indeed, object to the person selected for the office, but in that case his authority is limited to choosing between two other persons nominated by the King. During the continuance of the

Waldeck. (Area, 433 sq. m.; pop., 57,281.)

[1] The formula for the promulgation of laws recites that they are enacted by the King of Prussia in accordance with the treaty, and with the consent of the Prince and of the Landtag.

treaty, therefore, all the sovereign rights of the Prince are practically transferred to the Prussian monarch. The latter appoints the officers of state, who take an oath of allegiance to him; and in fact the administration is conducted largely by Prussian officials. Justice, moreover, is administered in the last instance by the Prussian courts; and, in short, the country is ruled in many respects like a Prussian province, a condition which is emphasized by the fact that the acts of the King are countersigned not only by the Landesdirector in accordance with the laws of Waldeck, but also by a minister at Berlin as acts of the Prussian crown.

The Landtag, which is chosen for three years, and must be summoned annually, is composed of fifteen members elected indirectly by the three-class system.[1] This system is also applied in the local government, which bears a strong resemblance to that of Prussia.

Lippe-Detmold. (Area, 469 sq. m.; pop., 128,495.)

The constitution of Lippe-Detmold[2] was made in 1836, but the organization of the Landtag was changed in 1876, a two thirds vote of that body being required for amendments. The Prince rules partly through a single Minister of State, and partly by means of a government board, an old-fashioned institution, formerly very common in Germany.

The Landtag, which has the usual powers, is composed of twenty-one members chosen by direct vote and secret ballot on the three-class system.[3] It is elected

[1] The voting is oral. The members are paid, and the powers of the body are broader than in many of the States.

[2] Falkmann, *Lippe*, in Marquardsen.

[3] The members are paid.

for four years, and must be summoned at least every other year.

In population, Schaumburg-Lippe[1] is the smallest of all the German States, but the hereditary Prince enjoys the powers of a sovereign on equality with the rest. The constitution, which dates from 1868, was amended in 1879.

Schaumburg-Lippe. (Area, 131 sq. m.; pop., 39,163.)

The Landtag has a curious organization. It contains fifteen members, of whom two represent the crown domains and are appointed by the Prince, one is chosen by the landowning nobility, another by the clergy, and a third by the lawyers, doctors, and schoolmasters, while of the other ten three are elected by the cities, and seven by the rural districts. Its term is six years, but it meets annually. The yearly budget, all laws and all treaties which affect commerce or impose burdens or duties on the state or on individuals, require its consent, and it has the power of initiative. It also elects an Ausschuss of three members to watch over its rights while it is not in session.

We now come to the Thuringian States, a group of eight small principalities lying in the centre of Germany, broken fragments of the territory possessed by the Ernestine branch of the House of Saxony. The territory has, indeed, been subdivided in a singular way, most of these little principalities consisting of two or more tracts of land, which are separated from one another. They retain, however, some joint institutions, which recall their common origin. Thus the four Saxon duchies still

The Thuringian States.

[1] Bömers, *Schaumburg-Lippe*, in Marquardsen.

maintain a common university at Jena, and the Oberlandesgericht at the same place acts as a court of appeal for all Thuringia (except Schwarzburg-Sondershausen), as well as for some of the adjoining parts of Prussia.

Saxe-Weimar. (Area, 1,388 sq. m.; pop., 326,091.)

Saxe-Weimar,[1] the largest of these principalities, has the oldest constitution in Germany. It was granted in 1816, but the powers of the Landtag were enlarged in 1850, amendments requiring a two thirds vote of that body and the presence of three quarters of the members.

The sovereign is the Grand Duke, who is assisted by a cabinet composed of the Minister of State and two other heads of departments, all his acts being countersigned by one of these three officials.

The Landtag consists of thirty-one members, of whom one is elected by the landowning nobility, four by the other landowners who have an income of three thousand marks, five by persons having an income of the same size from other sources, and twenty-one by electors chosen by universal suffrage. Professor Meyer is of opinion that the privilege given to the rich classes has proved an advantage by insuring the presence in the legislature of men of culture; but he thinks that the indirect method of choosing the representatives of the people at large has had the bad effect of making the voters indifferent, and to this system he attributes the fact that in the larger cities scarcely ten per cent. of the voters go to the polls. One finds it a little difficult to understand why the placing of an

[1] Meyer, *Sachsen-Weimar-Eisenach*, in Marquardsen.

additional cog-wheel in the electoral machinery should produce that result. But a sufficient cause of a lack of interest on the part of the voters may, perhaps, be found in the fact that the popular representatives form only two thirds of the Landtag, whose powers, moreover, are rather limited, and whose regular sessions are held only once during its term of three years, — a term for which the budget also is voted.

In the local government, the principle of giving special privileges to the higher tax-payers is applied in the smaller communes, but not in the larger ones. In none of these small states are there any administrative courts.

Saxe-Meiningen. (Area, 953 sq. m.; pop., 223, 832.)

In Saxe-Meiningen[1] the constitution dates from 1829, but has been amended, notably by acts passed in 1873 and 1875. The Duke governs by means of a minister, and a number of other heads of departments, of which there have been of late years only two.

The Landtag, whose powers are somewhat broader than usual, contains twenty-four members; four being elected in two districts by persons who pay a tax of sixty marks on land, four in four districts by persons who pay certain other taxes, and sixteen in as many separate districts by all the other citizens voting directly. The term is six years, and the budget is triennial, but in fact the Landtag meets every year.

As in Saxe-Weimar, the higher tax-payers have a privileged vote in the smaller communes, but not in the cities.

[1] Kircher, *Sachsen-Meiningen*, in Marquardsen.

Saxe-Coburg and Gotha. (Area, 755 sq. m.; pop., 206,513.)

The two duchies of Coburg and Gotha[1] are not contiguous, although each of them comprises tracts of land inclosed in the territory of the other. Until 1852, moreover, their only political connection was the fact that they had the same sovereign, but in that year the Duke, after trying in vain to consolidate them, succeeded in getting a common constitution adopted which created a union of a strangely federal character. Certain matters are declared to be common to both duchies. These are: the relations to the Duke, to the Empire, and to foreign countries; the constitution; the joint Landtag; the ministry; the courts; the archives; and the laws governing the conduct of officials. The matters not common to both duchies are the ordinary internal administration, the schools, churches, and finance.

The Duke[2] governs by means of a joint ministry, which is, however, divided into two sections, one for the special affairs of each duchy, the joint affairs being confided to the section to which the Minister of State happens to belong. This officer is at the head of the whole ministry, and in practice is treated as solely responsible for all the acts of both sections. The subordinate officials are partly joint and partly several, but are governed in all cases by the common administrative laws.

The legislative system is even more complicated. Each duchy has a separate Landtag, elected by indirect vote for four years by all citizens who pay a direct tax

[1] Forkel, *Sachsen-Coburg und Gotha*, in Marquardsen.

[2] The present sovereign is the Duke of Edinburgh.

and have households of their own. These bodies meet regularly in the first and fourth years of their terms, and attend to all matters which are not common. The Landtag of Coburg contains eleven members, that of Gotha nineteen, and these thirty meet together at least once every four years to form a joint Landtag, whose competence extends to those affairs which are made common by the constitution, or are subsequently declared to be such. In order, however, to protect the representatives from Coburg from being outvoted by their colleagues, it is provided that no amendment shall be made in the constitution, no addition shall be made to the common affairs, and no change shall be made in the administrative organization whereby an office is transferred from one duchy to the other, without the consent of a majority of the representatives from each duchy.

The finances, as we have seen, are not common to the two duchies, and hence the joint Landtag does not vote a budget. It merely approves the estimates for joint expenses, and thereupon these are inserted in the budgets of the separate Landtags in the proportion of three tenths for Coburg and seven tenths for Gotha.

Considering the size of the community, one feels, in examining this complicated mechanism, as if he were studying entomology with a microscope.

Saxe-Altenburg. (Area, 511 sq. m.; pop. 170,864.)

The constitution of Saxe-Altenburg,[1] which was made in 1832 and modified in 1870, can be amended by the Duke and the Landtag without any special formalities. The Duke gov-

[1] Sonnenkalb, *Sachsen-Altenburg*, in Marquardsen.

erns with the aid of a cabinet, composed of the Minister of State and two other heads of departments.

In the Landtag, which is elected for three years, the representation of property is carried out more elaborately than in any other State. Of the thirty members, nine are chosen in as many districts by the largest tax-payers, the line being drawn so high that only one person is admitted into this class for every five hundred inhabitants of the district. The other twenty-one seats are distributed among seven districts (three urban and four rural) returning three members apiece, one deputy being elected by each of the three classes into which the remaining tax-payers of the district are divided. The franchise extends, therefore, only to persons who pay a tax, and these are divided into four classes according to the amount of taxes they pay, the highest class choosing nine representatives and the other three seven apiece.[1] The powers of the Landtag are more circumscribed than usual. It has no authority to initiate legislation, but only a general right of petition; and, apparently from a fear that an assembly chosen by tax-payers might have a tendency to parsimony, it is provided that the Landtag shall not reduce the appropriations for current expenses below the amounts granted in the previous budget without the consent of the government.[2]

[1] The three-class system of election is also applied in the local government, which is not unlike that of Prussia.

[2] The budget is voted for three years at a time. There is a provision, which is common in the smaller States, that in case of a failure to agree on the budget the government can continue to collect and expend the existing taxes for another year. In Schwarzburg-Rudolstadt this can be done for three years.

In Schwarzburg-Rudolstadt,[1] the constitution, made in 1854, and amended in 1861 and 1870, can be changed only by a two thirds vote of the Landtag when three quarters of the members are present. The sovereign of the State is the Prince, whose cabinet consists of a Minister and three other heads of departments.

Schwarzburg-Rudolstadt. (Area, 363 sq. m.; pop., 85,863.)

The Landtag contains sixteen members, four of whom are elected in separate districts by persons who pay one hundred and twenty marks in direct taxes, the remaining twelve being chosen in separate districts by all the other tax-payers.[2] The term and the budgetary period are three years, and unless there are pressing matters that require attention, only a single session is held during that time. One would suppose that a body of sixteen members living near together could meet so easily that it would hardly be necessary for them to appoint a committee to represent them between the sessions; but the ancient practice is nevertheless followed of electing an Ausschuss which not only prepares business, and watches over the constitutionality of public acts, but also has authority by unanimous vote to sanction the enactment of statutes.

The constitution of Schwarzburg-Sondershausen[3] dates from 1857, and can be amended only by a two thirds vote of the Landtag repeated after an interval of fourteen days. The cabinet of the Prince consists of three members,

Schwarzburg-Sondershausen. (Area, 333 sq. m.; pop., 75,510.)

[1] Klinghammer, *Schwarzburg-Rudolstadt*, in Marquardsen.

[2] The higher tax-payers have no special privileges in the local government.

[3] Schamback, *Schwarzburg-Sondershausen*, in Marquardsen.

the control tending always to fall into the hands of the chief minister.[1]

The Landtag is composed of five members elected directly by the highest tax-payers, five elected indirectly by all the other voters, and not more than five appointed by the Prince for life. The term is four years; but a session must be held every other year, although the budget is voted for four years at a time. The legislature has the usual powers,[2] and it elects an Ausschuss, which prepares its business and can be intrusted with other duties. In local government the three-class system of election is applied.

Reuss-Schleiz. (Area, 319 sq. m.; pop., 119,811.)

In Reuss-Schleiz[3] the constitution rests on the laws of 1852 and 1856, modified by the electoral law of 1871.[4] This little principality deserves admiration from all historians for simplifying the nomenclature of its sovereigns by the artless device of naming all the scions of the princely house Henry.[5] The boys receive successive numbers in the order of their birth, and each new century begins with number one. Thus the reigning Prince is Henry XIV., and his father was Henry LXVII. Unfortunately, this is the only valuable contribution to the art of government that Reuss

[1] As in many of the smaller states there are more departments, but in practice they have not all different heads.

[2] As is commonly the case in the smaller states, the rules of procedure are not made by the Landtag at its pleasure, but are fixed by statute, and hence cannot be changed without the consent of the Prince.

[3] Müller, *Reuss jüngerer Linie*, in Marquardsen.

[4] No particular formality seems to be necessary for amendments.

[5] The practice is not new, and in fact dates back to the eleventh century.

has made. In other respects her political system does not differ materially from that of the other little German States.

The Prince rules with the help of a cabinet, consisting of a minister and two other heads of departments; and the Landtag, whose powers are fully as broad as usual, is composed of the head of the princely line of Reuss-Köstritz, of three members chosen by the highest tax-payers, and of twelve more elected directly and by secret ballot by all other men twenty-six years old who pay a small tax.[1] Its term is three years, and it must be summoned at least once during that period to vote the triennial budget. It chooses an Ausschuss to represent it between the sessions.

Reuss-Greiz. (Area, 122 sq. m.; pop., 62,754.)

The constitution of Reuss-Greiz[2] was made in 1867, and cannot be amended without a two thirds vote of the Landtag, and the presence of three quarters of the members. As in the other Reuss, all the men of the princely family are named Henry; the numbers, however, running from one to a hundred and then beginning again. The Prince carries on the administration not through ministers, but by the ancient method of a government board, whose members act together, and are not at the head of separate departments.[3]

The Landtag, whose term is six years, one half being renewed every three years, contains twelve members.

[1] The three-class system does not apply to the election of the communal councils, but half the members of those bodies must own land.

[2] Liebmann, *Reuss älterer Linie*, in Marquardsen.

[3] His acts must, however, be countersigned.

Of these, three are appointed by the Prince, two are chosen directly by the great landowners, three are elected indirectly by secret ballot by all the tax-payers of the cities, and the remaining four are returned in the same way by the rural districts. The powers of this body are decidedly limited, for it has no initiative, but only a right to request legislation; and in regard to the budget, which is voted for three years at a time, the estimates proposed by the government can be rejected only by a two thirds vote, so that the crown has only to obtain the support of two members in addition to its own appointees in order to pass any budget it pleases.[1]

Mecklenburg-Schwerin. (Area, 5,135 sq. m.; pop., 578,342.)

Mecklenburg-Strelitz. (Area, 1,131 sq. m.; pop., 97,978.)

The duchies of Mecklenburg-Schwerin and Mecklenburg-Strelitz have been placed at the end of the list of monarchical states, because, unlike the rest, their organization remains distinctly feudal and unaffected by modern constitutional ideas.[2] They are subject to different grand dukes, but their institutions are interlaced in such a way that it is impossible to describe them separately. It would, in fact, puzzle a political philosopher to say whether, before their nationality became merged in that of Germany, they were two nations or one; for although the treaty of 1701 declares each Grand Duke independent and sovereign in his own territory, there is a common Landtag, a common court of appeals, and several other common institutions protected by the fundamental laws.

[1] Even if the budget is rejected, the crown can continue to collect the taxes for another year.

[2] Büsing, in Marquardsen.

The constitution is not embodied in any single instrument, but rests upon the "Union" of 1523, the "Reversales" of 1555, 1572, and 1621, and the compacts of 1755 and 1817, the most important of all these being the *Vergleich* of 1755. The organization created by these documents is in its main traits as follows: —

The executive power in each duchy is exercised by the Grand Duke, except that the administration of a few matters is committed to joint officials acting in behalf of both states. For legislation, on the other hand, there is a common Landtag, which can be summoned to meet only by the Grand Duke of Mecklenburg-Schwerin, but must be called together by him at least once a year. Either monarch, after giving notice to the other, may submit measures to it, and as a rule the two governments agree on the bills to be presented.

The Landtag is strictly an assembly of estates, based on the tenure of land. These estates are the *Ritterschaft*, or owners of knights' fees, all of whom, nearly eight hundred in number, have a right to sit, although few of them actually attend;[1] and the *Landschaft*, or municipal authorities of the cities, which appear in the persons of deputies commissioned by the city magis-

[1] Only a little more than sixty of these belong to Strelitz, and the rest to Schwerin. The exceeding disparity in the numbers from the two duchies is largely due to the fact that the principality of Ratzeburg, which forms a considerable part of Strelitz, is not included in the territory to which the constitution applies, and is not represented in the Landtag. The same thing is true of the cities of Wismar and Neustrelitz. The connection of Ratzeburg with Strelitz, which is more than a mere personal union under the same crown, is one of the many anomalies to be found in these duchies.

trates.[1] In several of the cities, however, the burgomaster is *ex officio* the deputy; and as that officer is usually appointed by the crown, these cities have in reality no control over their representatives.

The process of legislation is based upon the mediæval idea that laws are made by the crown with the consent of the persons whose rights are directly affected; and hence the laws are divided into three classes: first, those which concern exclusively the ducal officials, or apply only to the domains of the crown, — a district comprising about two thirds of the territory in each duchy. In regard to these, the power of the crown is absolute. Second, those which affect the rights or privileges of the estates or their members, including laws that extend the revenues of the crown beyond the *regalia majora*. For these the consent of the Landtag is required.[2] Third, those which do not directly affect the rights or privileges of the estates,

[1] Including the seaport Rostock, there are forty-eight of these cities, of which seven lie in Strelitz.

[2] Each new law is in effect a contract proposed by the crown and assented to by the Landtag. The communications between the government and the estates are entirely in writing as the ministers do not appear in the Landtag, the procedure being as follows: the crown sends a message proposing a measure to the Landtag, which thereupon votes a declaration or memorial containing, in fact, an answer, accepting, rejecting, or modifying the measure. If the crown is satisfied, it enacts the law as amended. If not, it answers the memorial in a rescript; and this process is repeated until an agreement is reached, or it is evident that an accord is impossible. The debates seem to be conducted without the slightest idea of order, every one speaking whenever he pleases and as long as he likes, so that in times of excitement as many as twenty orators have been known to address the house at one time. For a humorous account of the procedure, see *Bib. Univ. et Revue Suisse*, May, 1895, pp. 396–400.

and do not fall within the first category. About these the Landtag must be consulted, but its consent is not necessary. The principle that the consent of the persons directly interested is alone required for legislation is, indeed, carried farther than this; for if a measure affects only one estate or one district, or even, as it seems, one city, the consent of the representatives of that estate, district, or city is enough, — a survival in complete form of the political ideas of the thirteenth century. The estates sit as a single chamber, each Ritter and each city having one vote, and as a rule the majority decides; but in order to protect the cities from being swamped by the far more numerous Ritter, it is provided that either estate may demand the *Itio in partes*, that is, a separate vote by each estate.[1]

The financial system of the duchies is extremely complex, for the revenues are of three kinds, which are kept distinct and managed quite separately. The receipts from the *regalia majora*, and the taxes raised on the crown domains, forming decidedly the largest source of income, are entirely under the control of the crown in each duchy. Then there are certain funds and permanent taxes managed for both duchies in common by officials appointed by the Landtag. This is the smallest source of income, and the proceeds appear to be used to defray part of the interest on the

[1] There are *Konvokationstage* and *Deputationstage;* that is, assemblies of estates for a single duchy or district, whose functions extend to matters that do not concern the whole Landtag. They can be summoned by either of the Grand Dukes, but in fact this is not often done. The estates elect an *Engere Ausschuss*, which represents them when they are not in session, and has charge of certain funds.

public debt. Finally, the balance of expenses is covered by taxes voted by the common legislature, but administered in each duchy by a separate board appointed partly by the Grand Duke and partly by the joint Landtag.

The political organization of the Mecklenburgs has a peculiar interest, because it is a survival of mediæval institutions which has retained its vitality to the present day. It is a fragment of the thirteenth century projected into the nineteenth. The absence of representative assemblies in these duchies has been a sore grievance to the German Liberals, who have more than once carried through the Reichstag proposals to amend the imperial constitution so as to require every State to have a legislative chamber elected by the people. The Bundesrath, however, has always rejected the proposals. This might lead one to suppose that the objection to change came from the governments of the duchies; but such is not the case, for the Grand Duke of Mecklenburg-Schwerin has on several occasions tried to establish a representative chamber, and in every case his efforts have been frustrated by the refusal of the Ritterschaft to surrender its privileges.

Hamburg. (Area,[1] 58 sq. m.; pop., 622,530.) Bremen. (Area, 99 sq. m.; pop., 180,443.) Lübeck. (Area, 115 sq. m.; pop., 76,485.)

The governments of the three Hanse cities have all gone through the same process of evolution, from their former patrician condition; and they are now so much alike that it is enough to describe the political organization of Hamburg, and point out in the notes the chief points of difference to be found in the other two.[1] The present constitution of Hamburg

[1] Wolffson, *Hamburg;* Sievers, *Bremen;* and Klugmann, *Lübeck*, in Marquardsen.

was made in 1860, and revised in 1879.[1] Amendments require a three quarters vote in each of the two political organs of the state, the Senate and the *Bürgerschaft*.[2]

The executive power is vested in the Senate, which occupies, in fact, a position analogous to that of the monarch in the other German States, subject, however, to the important limitation that it cannot dissolve the Bürgerschaft. It appoints the officials, has the usual right of the crown to issue ordinances to complete the laws, appoints the delegate to the Bundesrath, and gives him his instructions. It chooses every year from its members a burgomaster, but this officer only presides over the body, and is in no sense the head of the administration. On the contrary, the executive work is divided among the senators, one or more of whom are placed at the head of each of the nine departments. The Senate consists of eighteen members, of whom nine must be learned in the law, and seven must have been merchants.[3] They are chosen for life, are paid, and are obliged to accept the office, but are permitted to resign after they have served six years, or have attained the age of seventy.[4] The method of election is peculiar, for when a vacancy occurs, the Senate chooses four of its members to serve on a nominating

[1] Those of Bremen and Lübeck were made in 1854 and 1851 respectively, and both were slightly modified in 1875.

[2] In Bremen an affirmative vote of a majority of all the members in each body is enough.

[3] In Bremen ten of the eighteen must be learned in the law, and five must be merchants In Lübeck the Senate consists of fourteen members.

[4] In Bremen, service is not compulsory.

committee, and the Bürgerschaft does the same. These eight men draw up a list of four candidates, from whom the Senate selects two, and one of the two is then elected senator by the Bürgerschaft, — a procedure which, as Wolffson points out, practically enables the Senate to control the election.[1]

The Bürgerschaft is a representative assembly of one hundred and sixty members, elected in three categories by direct vote and secret ballot. The first category consists of eighty members, chosen in forty districts by all the citizens who pay a tax on an income of six hundred marks. The second contains forty members, chosen in twenty districts by the landowners; the third, forty members chosen at large by all men who are or have been judges, officials, or members of chambers of commerce or trade.[2] The service is unpaid, and as a rule compulsory. The term is six years, one half of the members being renewed every three years;[3] but the sessions are not fixed by law, for the body meets

[1] In Bremen, on the other hand, the controlling power is in the hands of the *Bürgerschaft;* for that body is divided by lot into five sections, each of which nominates three candidates, and chooses one elector. These five electors, together with an equal number chosen by the Senate, select three of the fifteen candidates, from whom the Bürgerschaft elects the Senator. In Lübeck all the senators and an equal number of men chosen by the Bürgerschaft meet to elect the new senator.

[2] The Bürgerschaft in Bremen consists of one hundred and fifty members, of whom fourteen are elected by the university graduates, forty-two by the merchants, manufacturers, and tradesmen, twenty-two by the artisans and craftsmen, forty-four by the other inhabitants of the city, and twenty-eight by the residents of the suburbs, some of them on a property qualification. In Lübeck, the body contains one hundred and twenty members, elected by all the citizens in ten districts.

[3] In Lübeck one third of the members are renewed every two years.

whenever it sees fit, and except in the summer sits almost every week.

All laws, treaties, and financial matters require the consent both of the Senate and the Bürgerschaft,[1] and each body has the right of initiative.[2] The Bürgerschaft also takes an indirect part in the administration, for there are attached to most of the executive departments deputations or commissions, composed of senators and of unpaid members chosen for a term of years by the Bürgerschaft, and these bodies have powers that are partly executive and partly advisory.[3] The Bürgerschaft elects, moreover, an Ausschuss, intrusted with the duty of watching over the execution of the laws; but owing to the frequency of the meetings of the representative assembly itself, this committee does not appear to have much importance.[4]

In Hamburg the governments of the city and the state are now identical,[5] except that the suburban communes still retain a certain amount of local self-government. Both Hamburg and Bremen had a right

[1] In case of disagreement, either body can demand a joint committee, which has an absolute power of decision, but this strange procedure has never been used. The Senate can appoint commissioners to attend the sittings of the Bürgerschaft, but rarely does so, although it is thought that a free use of the power might prevent needless waste of time.

[2] In Lübeck, at least, the Bürgerschaft makes little use of this right.

[3] Of Bremen, Dr. Sievers remarks that there is no hierarchical bureaucracy, but that the various deputations are prevented from pursuing inconsistent policies by close personal relations, and by referring all important matters to the Senate and Bürgerschaft.

[4] In Lübeck this body is much more important, for it considers all the measures to be submitted to the Bürgerschaft by the Senate, and chooses the members of various commissions.

[5] This is not quite true of Bremen, and still less of Lübeck.

under the constitution of Germany to remain free ports outside the customs union; but, as we have already seen, when treating of the Empire, both cities have surrendered this privilege, save as regards a strip of ground along the quays.

Like some other German States, the three Hanse cities have combined for the better administration of justice. By a treaty, renewed for ten years at a time, there is a common court of appeal which now sits at Hamburg, the presidents being appointed by concurrent action of the three Senates, and the other judges by each State in proportion to the shares in which the expenses are borne.

The political organization of Hamburg, with the carefully selected body of life senators at its head, produces a continuity of tradition and a watchful care for the future, which insures prudence, economy, and foresight. But, on the other hand, the fact that all three of the deputies to the Reichstag from the city are Social Democrats — a clear indication in Germany of political discontent among the working-classes — seems to show that the system does not satisfy a large section of the community. In short, the government of Hamburg has the same merits and defects that are found in the other great cities of the country.

Alsace-Lorraine.[1] (Area, 5,600 sq. m.; pop., 1,603,506.)

When the French provinces west of the Rhine were ceded to Germany in 1871, after the war with France, they were placed by the force of circumstances in an anomalous and unfortunate position. The violent objection of the inhab-

[1] Leoni, *Elsass-Lothringen*, in Marquardsen.

itants to the annexation, and their consequent hostility to the Empire, forbade any plan for creating a new State with the autonomy and the privileges of the other members of the Confederation. On the other hand, a proposal to incorporate the provinces with any existing State would have aroused instant jealousy; nor could any State, except Prussia, have annexed them without serious danger to its own internal tranquillity. The only possible course, therefore, was to treat the country as a dependency of the Empire, under the direct control of the imperial authorities. With this object the act of June 9, 1871, gave the executive power to the Emperor, reserving the legislative for the Bundesrath and the Reichstag. In response, however, to a demand for self-government, an imperial decree of October, 1874, created a *Landesausschuss*, with advisory powers, and in 1877 a statute was passed providing that laws for Alsace-Lorraine might be enacted by the Emperor without the consent of the Reichstag, if the Bundesrath and the Landesausschuss agreed upon them.[1] Finally, on July 4, 1879, another statute enlarged the Landesausschuss, gave it a right to originate legislation, and authorized the appointment of a Statthalter to exercise the powers previously confided to the imperial Chancellor. At present, therefore, the executive power is vested in the Emperor, who acts through the Statthalter, while the laws are made by him with the consent of the Bundesrath and the Landesausschuss. They may, however, still be made at any time by the

[1] For the power of the Emperor to make ordinances, see the act of June 25, 1873.

Bundesrath and Reichstag, which are thus enabled to disregard local opinion entirely if they please.[1]

The Statthalter is appointed and removed at pleasure by the Emperor, to whom he is directly subordinate. He is, in fact, the minister for Alsace-Lorraine, and as such he countersigns the acts of the crown. He governs by means of a cabinet, composed of a secretary of state and four heads of departments; and, in accordance with the French traditions, he is assisted by a council of state with merely advisory powers.

The Landesausschuss, which must be summoned every year, is composed of fifty-eight members, of whom thirty-four are chosen by the elected provincial councils of Upper Alsace, Lower Alsace, and Lorraine; four by the municipal councils of each of the four largest cities; and the remaining twenty by electors chosen by the councils of the rural communes. Contrary to the usual sensible practice in Europe, the members must be residents of the districts they represent, and those who are chosen directly must also be members of the council by which they are elected. The deputies are chosen for three years, but they are not all elected at the same time except when the body is dissolved by the Emperor.

In the local matters the old French system has been in the main preserved, all the executive officials being appointed by the government, and the local councils

[1] Any change in the fundamental laws or the statutes passed by the Reichstag must be made in this way; when any other laws are so made they require the sanction of the Emperor, as a part of the ordinary legislation of the province.

being elected by universal suffrage.[1] In regard to the central officials, on the other hand, the German law has been introduced which protects them from arbitrary removal.

The provinces participate to some extent in the government of the Empire, for they elect fifteen representatives to the Reichstag, and since 1879 the Statthalter has been authorized to send delegates to the Bundesrath, but as envoys so appointed would be under the control of the Emperor, and hence for practical purposes additional Prussian delegates, they have merely been given a right to speak without votes.

The motives for annexing Alsace-Lorraine were chiefly military, but there was also no little talk about restoring the long-lost brothers to the German family. The brothers, however, although for the most part German by race and language, cried piteously at the thought of being united to the Fatherland, and the government has been obliged to use its utmost energies in trying to reconcile them to their lot. How far these efforts have succeeded it is difficult to say. The French writers declare that nothing has been accomplished in changing the sentiments of the people, while the Germans insist that if the result has not been quite satisfactory, the progress has been very considerable. A recent English observer, who may be supposed to be impartial, is of opinion that at bottom the popular sentiment has undergone little change, and attributes this to the fact that although the Germans have ruled the

[1] The French system of administrative justice has also been preserved with some modifications.

land well and kindly, they have shown towards the people a lack of confidence and sympathy, while the officials, who are mostly Prussians, have been domineering, and used their arbitrary powers in a despotic spirit.[1] Blum, on the other hand, in his recent history of the German Empire,[2] says that the mild government of the first Statthalter, General von Manteufel, was a failure, but that since 1885, the more severe policy of his successor, Prince Hohenlohe-Schillingsfürst (the present Chancellor of the Empire), has borne better fruit. In favor of this view, it must be observed that candidates friendly to the Empire won in 1890 four, and in 1893 five, out of the fifteen seats in the Reichstag, a result that is, however, perhaps due less to any direct effect on the natives than to the large emigration of French sympathizers, whose places have been taken by Germans from the other side of the Rhine.

This brief survey of the governments of the smaller States is enough to show the great vitality of the monarchical principle throughout Germany; for although the representatives of the people exert everywhere, except in Mecklenburg, a certain influence on public affairs, the guiding and controlling force is always vested in the Prince. Moreover, democracy does not appear to be gaining ground. During the last twenty years the German constitutions have undergone few changes, and the diets have shown little inclination and still less ability to curtail the prerogatives of the crown. One reason for this is, of course,

[1] Henry W. Wolff, *West. Rev.*, Dec., 1890.

[2] *Das Deutsche Reich zur Zeit Bismarcks*, pp. 637–57.

the prevailing faith in the monarchical form of government. Another is the peculiar character of the Confederation, which has deprived the States of most of their legislative power, but left their executive functions almost intact, and hence has diminished the authority of the diets far more than that of the princes. Still a third reason is to be found in the subdivision of parties, which will be discussed in the following chapter.

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